

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 74-1853

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P/S

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## United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 74-1853

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SHINKO BOEKI CO., LTD.,

*Plaintiff-Appellant,*

*against*

S.S. "PIONEER MOON", her engines, boilers, etc., and  
UNITED STATES LINES, INC.,

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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### JOINT APPENDIX

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## INDEX

	PAGE
Relevant Docket Entries .....	1
Excerpts from Trial Transcript .....	3
Opinion .....	11
Judgment .....	15

### PLAINTIFF'S EXHIBITS

1. Stipulation, dated November 1, 1972 .....	17
2. Stipulation, dated March 23, 1972 .....	22

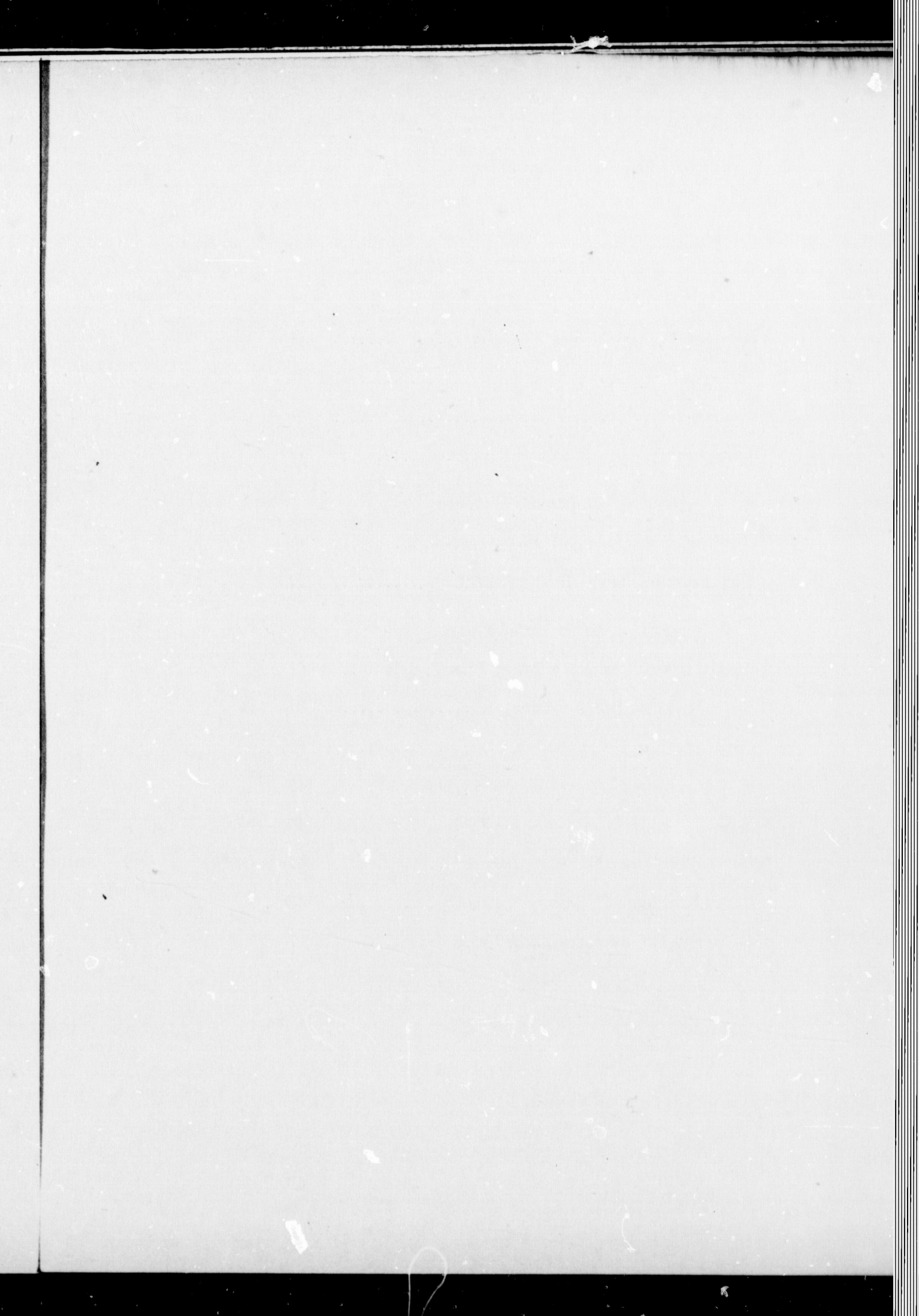
### DEFENDANT'S EXHIBITS

A—Excerpts From Deposition of John B. Grimes ...	24
B—Short Form Bill of Lading .....	39
C—Long Form Bill of Lading .....	40
D—Letter, dated January 17, 1969 .....	42
D-1—Letter, dated February 1, 1969 .....	43
D-2—Letter, dated March 18, 1969 .....	44
D-3—Letter, dated February 1, 1969 .....	45
E—Far East Conference Tariff No. 24 .....	47

### Relevant Docket Entries.

DATE	PROCEEDINGS
Jan. 27, 70	Filed complaint and issued summons.
Feb. 19, 70	Filed summons with marshal's return. Served U.S. Lines Inc. by Miss Loman on 2-2.
Dec. 18-70	Filed ANSWER of U.S. Lines, Inc. to complaint.
Jan 15-71	Filed defts's notice to take deposition upon oral examination
Nov. 12-73	Filed consent and pre-trial order. FRANKEL, J.
Apr. 17-74	Before FRANKEL, J. non-Jury trial begun and concluded. Decision reserved.
May 1-74	Filed Post Trial Brief of deft.
May 14-74	Filed Memorandum—as indicated the Clerk of the Court will enter judgment for plttf. in the amount of \$5,500, plus interest from 1-14-1969, and costs to be taxed. It is so ordered—FRANKEL, J. (m/n)
May 23-74	Filed Judgment # 74,445—ordered that plttf. Shinko Boeki Co., Ltd. have judgment against the defts. SS Pioneer Moon, her engines, etc. and United States Lines, Inc., in the amount of \$5,500., plus interest from 1-14-69, with costs to be taxed. Clerk. Ent. 5-24-74 (mailed notices)





*Relevant Docket Entries.*

DATE	PROCEEDINGS
June 5-74	Filed stip & order—that costs may be taxed in the amount of \$88.86 and that interest from 1-14-69 to the date when this stip is approved by the Court amounts to \$2,112.96. So ordered—FRANKEL, J.
June 12-74	Filed plttf's notice of appeal from Judgment dated 5-23-74 as limits plttf's recovery against deft. United States Lines, Inc. for a total of \$5,500.00. Copy mailed to: Kirlin, Campbell & Keating. Entered—6-14-74.
June 26-74	Filed stip between the respective parties of exhibits on appeal.
June 28-74	Filed transcript of record of proceedings, dated April 17-74
July 1-74	Filed notice that the record on appeal has been certified and transmitted to the USCA on 7-1-74
July 17-74	Filed satisfaction of Judgment # 74,445.



**Excerpts From Trial Transcript.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

70 CIVIL 329

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SHINKO BOEKI Co., LTD.,

Plaintiff,

*vs.*

S.S. PIONEER MOON, her engines, etc., U. S. LINES, INC.,  
Defendant.

Before: HONORABLE MARVIN E. FRANKEL, District Judge.

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New York, N.Y.  
April 17, 1974

APPEARANCES:

Bigham, Englar, Jones & Houston,  
Attorneys for Plaintiff,  
Vincent Leibell, Jr., Esq., of Counsel.

Kirlin, Campbell & Keating,  
Attorneys for Defendant,  
Richard H. Sommer, Esq., and  
J. Scot Provan, Esq., of Counsel.

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(2) The Court: All right, gentlemen, I have been told that you handled most of your problems by stipulation or something of that nature.

*Excerpts From Trial Transcript.*

Mr. Leibell: Yes. I think we can just move it along this way, your Honor. There are two stipulations that you will recall from the briefs. I have both the originals here, and they are, of course, both signed, and I offer them.

The Court: All right.

Mr. Leibell: Your Honor has the pre-trial order already in the file.

\* \* \*

(3) \* \* \*

The Court: And you agree that on the basis of those stipulations the Court under the law governing the carriage of goods would have to find your client liable?

Mr. Sommer: That's correct, sir. He has established a prima facie case.

\* \* \*

(6) \* \* \*

Mr. Leibell: You will need the deposition of Mr. Grimes, your Honor, which has been taken, and there is only one exhibit to that deposition. It's not a long one, probably about 21 pages.

The Court: That deposition is where?

Mr. Leibell: Mr. Sommer has it here.

Mr. Sommer: This is a bill of lading that was marked as an exhibit.

The Court: How should I handle this? Shall I make them exhibits in this record?

Mr. Sommer: I think it would be simpler, your Honor, if you make this a separate exhibit. You will agree this can be a separate exhibit?

Mr. Leibell: Yes, your Honor.

The Court: So we will call the deposition whose exhibit?

Mr. Leibell: It was taken by the defendant.

The Court: Do you want to call it defendant's Exhibit A?

(7) Mr. Sommer: Defendant's Exhibit A.



*Excerpts From Trial Transcript.*

The Court: And this is the bill of lading?

Mr. Leibell: That is the only thing that was marked at the deposition.

The Court: Shall we call it Exhibit B for this record?

Mr. Leibell: All right.

(Defendant's Exhibits A and B received.)

Mr. Leibell: Your Honor, there is only one reason I can think of that you might be interested in reading the stipulations. You won't need them for the point involved, but if you write an opinion, you may want to have a paragraph or two about the background facts rather than launching right into the point of law at issue. You may possibly—

The Court: Those stipulations that I handed back will cover that?

Mr. Leibell: Yes.

The Court: All right, then I retract, and I will take them.

Mr. Leibell: You won't need them on the issue of liability, but you may need them for your background facts. I refer to them in the brief.

The Court: Shall we mark them as exhibits in this record?

Mr. Leibell: I think it would be a good idea. Call (8) them mine, plaintiff's 1 and 2.

The Court: Plaintiff's exhibit 1 and 2, all right.

(Plaintiff's Exhibits 1 and 2 received.)

\* \* \* \* \*

The Court: As to damages, am I correct in understanding that if the package limitation is held applicable, the plaintiff recovers \$5,500?

Mr. Leibell: That's correct, your Honor.

*Excerpts From Trial Transcript.*

The Court: And if it is not?

Mr. Leibell: It come to between 27 and 28 thousand dollars. Mr. Sommer and myself have no difficulty over that.

The Court: I could have you prepare a judgment either way? Is that what you are suggesting?

Mr. Leibell: Yes.

Mr. Sommer: Yes, there would be no problem.

The Court: All right, somewhere between \$27,000 and \$28,000.

Mr. Sommer: The pre-trial order suggests it was \$27,733.73.

Mr. Leibell: That would be the figure.

(9) Mr. Sommer: That is plaintiff's figure and we have no reason to—we think that would be his damages if it's not limited.

\* \* \* \* \*

Mr. Leibell: We have just, I believe, one other point. We wanted to stipulate the size of these tanks so your Honor would have that for the opinion, if you want it.

Mr. Sommer: We have no quarrel with that. The plaintiff indicates the tanks were seven feet one inch in length by seven feet nine inches in width and six feet four inches in height.

Mr. Leibell: That's correct.

The Court: Six feet four high?

Mr. Leibell: Yes, sir, width seven nine, length seven one.

The Court: That is now stipulated?

Mr. Sommer: Yes, sir.

\* \* \* \* \*

(10) Mr. Sommer: The only other item I'd like to introduce as exhibits which are referred to in the pre-trial order is the long-form bill of lading in use at the time, which is referred to on Exhibit B.



*Excerpts From Trial Transcript.*

(Defendant's Exhibit C received.)

Mr. Sommer: Finally, there is some correspondence between the shipper, Firestone International—no, excuse me—there is correspondence between the plaintiff and defendant which is set forth in the pre-trial order, namely, the letters of January 17, February 1, and March 18, 1969, as well as a letter of the plaintiff of February 1, and we gave you copies of those, I am sure.

Mr. Leibell: I think I have them.

Mr. Sommer: These can be defendant's Exhibits D, D-1, D-2, and D-3.

(Defendant's Exhibits D, D-1, D-2, and D-3 received.)

Mr. Sommer: The final exhibit for defendant that plaintiff's counsel agree on is the pertinent page of the Far East Conference Tariff in effect at the time. You have no objection, Mr. Leibell?

Mr. Leibell: No.

(Defendant's Exhibit E received.)

\* \* \* \* \*

(15) \* \* \*

The Court: Do the stipulated facts show whose containers they are?

Mr. Sommer: Yes, your Honor. They are our containers, the defendant's containers.

\* \* \* \* \*

The Court: Is there any material in this record, as you gentlemen have now made it, that tells me whether there are alternative ways to ship this commodity?

Mr. Sommer: Yes, your Honor. The deposition of Mr. Grimes is that his company ships these in drums, they ship

*Excerpts From Trial Transcript.*

it in bulk as well, that is, right into the hold of a ship, and they ship it in these containers.

Mr. Leibell: I dislike disagreeing with my friend, Mr. Sommer. When Mr. Grimes testified, he was asked this question by Mr. Sommer's predecessor:

(16) "Q. Do you have any knowledge as to why this shipment moved in the type of tanks that it did? A. To the Far East at that time, that was the only type of operation available for bulk shipment of latex. There wasn't any choice."

Mr. Sommer: Well, he testified they shipped them by drums and other means.

Mr. Leibell: There was no choice in shipping latex in bulk to the Far East at that time. It had to be done that way.

\* \* \* \* \*

(18) \* \* \*

The Court: You are agreed that if you put it in a ship's tank, that stuff in a tank is valued by unit and there is no package limitation?

Mr. Sommer: That would be a bulk shipment.

The Court: If you ship it in drums, then the drum is a package?

Mr. Sommer: Clearly.

The Court: So this is somewhere between a drum (19) and a tank?

Mr. Leibell: It's a tank, that's what it is.

Mr. Sommer: I say it's a large drum really.

The Court: You say it's a large drum, and you call it a tank.

\* \* \* \* \*

(21) \* \* \*

The Court: You have eleven of these containers. Is "container" a neutral word as far as you are both concerned?



*Excerpts From Trial Transcript.*

Mr. Sommer: I think we agree that is a neutral word.

Mr. Leibell: Yes.

\* \* \* \* \*

(23) \* \* \*

I think your Honor appreciates in these cases that have been going through these courts in the last ten years, they recognize the economic issue. There is no secret to the fact that both sides are insured. It's a question of who is going to bear the risk. In other words, the P & I Association, which is one club for the vessel, which is then, in the event something happens, the risk will be on the vessel owner's mutual liability policy, or it is spread among the shippers. The shipper is the one who knows what his cargo is worth, and he is the one that can insure it. He (24) comes into a situation where he is shipping something worth more than \$500 a drum, or whatever the unit is, he has two alternatives. One, he can go to the carrier and say, "This is worth more than \$500; I want to declare its value."

If he does so, the carrier can no longer rely on the \$500 limitation. The carriage-of-goods-by-sea act specifically says so; the bill of lading says so. The carrier in that event may charge a higher rate. The carrier can then insure that particular cargo in cases like that.

But in this case, and the one reason I put in the tariff exhibit, the shipper didn't declare a higher value. He had a choice of paying a higher rate, and the act doesn't even put that burden on him. All he has to do is declare the value is in excess of \$500 for limitation purposes, and therefore, the carrier cannot limit it.

\* \* \* \* \*

(27) The Court: The decisions, I am sure, make explicit the point that is of interest here that really this is a fight between insurers and a problem of allocating a risk for insurance premium purposes.

*Excerpts From Trial Transcript.*

Mr. Leibell: Judge Friendly discusses this in the Mormaclynx, but in the same argument that Mr. Sommer has made there, he said—they said you can go ahead and declare a higher value. As the Court said there, if it wasn't a package, there is no reason for them to declare a higher value and pay a higher freight.

The Court: Sure, you meet yourself coming home.

Mr. Leibell: You are back to the prime question.

The Court: Because the question is, is it a package, and the question Mr. Sommer is putting to me is, what considerations do you weigh and how do you weigh them in answering that question.

Mr. Leibell: In other words, you are back to the basic question.

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**Opinion.**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

70 Civ. 329

## MEMORANDUM

SHINKI BOEKI CO., LTD.,

Plaintiff,

*against*SS PIONEER MOON, her engines, boilers, etc. and  
UNITED STATES LINES, INC.,

Defendants.

FRANKEL, D.J.

The court is enwrapped once again in the seemingly endless fascinations brought to us by contending insurers at war over "what constitutes a 'package' within § 4(5) of COGSA, 46 U.S.C. § 1304(5)," a course of infinitely varying studies of which it is confidently known this case "will hardly be the last." *Leather's Best, Inc. v. S.S. Mormaclynx*, 451 F.2d 800, 814 (2d Cir. 1971). The challenge is not diminished by our awareness that "[t]he problem demands a solution better than the courts can afford," *id.*, and that it could be avoided in substantially every case by the shipper's decision to state and pay for the protection he desires.

The case arises from a shipment of 24 "lift-on lift-off tanks" of liquid latex to plaintiff in Japan from Firestone International Company acting as plaintiff's agent for all purposes relevant here. The tanks were ordered by Fire-

*Opinion.*

stone from defendant United States Lines, Inc.,\* filled by Firestone with the liquid latex, and delivered to the ship Pioneer Moon for storage in its hatches. Each tank was 7'1" long, 7'9" wide, 6'4" high, and had a capacity of 2,000 gallons. The tanks belonged to defendant.

Liquid latex may be shipped "in bulk" by being pumped into a ship's built-in deep tanks (a kind of facility existing on the Pioneer Moon as well as other vessels), in drums (which all seem to agree would be "packages" for present purposes), or in tanks like those used in this case.

Upon the form bill of lading supplied by defendant, the shipper listed numbers totaling 24 under the column headed "No. of Pkgs.," wrote under "description" that they were "lift on lift off tanks synthetic latex," and added that they were "said to weigh 359,170" pounds. Freight was charged on this weight at \$54 per long ton, for a total of \$8,658.56. The long-form bill of lading, incorporated in the contract of carriage, said *inter alia*:

"It is agreed and understood that the meaning of the word 'package' includes containers, vans, trailers, palletized units, animals and all pieces, articles or things or any description whatsoever except goods shipped in bulk."

Upon arrival in Japan, 11 of the tanks were found to be severely damaged and their contents totally lost. Plaintiff proceeded to assert claims for the loss against defendant. The loss was repeatedly described by plaintiff in terms of "11 tanks" damaged with resulting leakage of the latex.

Following rejection of its claim, plaintiff brought the present suit on January 27, 1970. The case floated gently

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\* This defendant is the only one before us and is hereinafter referred to merely as the singular "defendant." The ship Pioneer Moon, named in the complaint, has not been served or otherwise brought within the Court's jurisdiction.



*Opinion.*

over the years at a rate suited to its great subtlety and slight urgency. Finally, at a brief hearing on April 17, 1974, the facts were wholly stipulated and defendant conceded liability for the loss. This left for decision the measure of damages. And this, as has been stated, turns on whether the tanks were "packages," to be valued at a maximum of \$500 each, or whether, if that characterization is not the correct one, the plaintiff is entitled to recover at the rate of up to \$500 "per customary freight unit," 46 U.S.C. § 1304(5). It is stipulated that recovery on the package basis ( $\$500 \times 11$ ) will be \$5,500, and, on the freight unit basis, \$27,733.73.

Counsel have covered exhaustively the learning on the issue thus presented. Without recounting again these detailed expositions, the court concludes that the tanks should be treated as "packages." No single case or single factor appears to control. The court's conclusion is rested in part upon the parties' own descriptions and treatment of the containers. It seems sound in fact and in legal conception to say these movable receptacles, requested by Firestone, were not "functionally a part of the ship," *Leather's Best, supra*, 451 F.2d at 815, even though they were defendant's property. The alternative of shipment "in bulk," whether or not it was specifically open at the moment in question, was and is another known and used mode of shipment. The "functional economics test" of *Royal Typewriter Co. v. M/V Kulmerland*, 483 F.2d 645, 648-49 (2d Cir. 1973), if not mechanically applicable, seems to support the result herein.

It follows that the judgment for plaintiff will be in the sum of \$5,500.

Plaintiff seeks, and defendant resists, an award of interest from January 14, 1969, both agreeing that the matter is discretionary. Interest will be ordered. Defendant withheld until the date of "trial" a concession of liability.

*Opinion.*

Had plaintiff's right to recover been acknowledged at any time, it would have been plain that defendant owed at least the \$5,500 now held payable. There is no reason to sanction defendant's free use of the money during the excessive time of the suit's pendency.

The Clerk of the Court will enter judgment for plaintiff in the amount of \$5,500, plus interest from January 14, 1969, and costs to be taxed.

It is so ordered.

Dated: New York, New York, May 13, 1974.

MARVIN E. FRANKEL  
U.S.D.J.



**Judgment.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGMENT

#74, 445

70 Civil 329

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SHINKO BOEKI Co., LTD.,

Plaintiff,

*against*

SS PIONEER MOON, her engines, etc.,  
UNITED STATES LINES, INC.

Defendants.

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The above entitled action having been brought on regularly for trial before the Honorable Marvin E. Frankel, United States District Judge, on April 17, 1974, and at the conclusion of the evidence the Court reserved decision, and the Court thereafter on May 14, 1974, having handed down its memorandum decision and directing the Clerk to enter judgment in favor of the plaintiff, it is,

ORDERED, ADJUDGED and DECREED: That plaintiff Shinko Boeki Co., Ltd., have judgment against the defendants SS Pioneer Moon, her engines, etc., and United States Lines, Inc., in the amount of \$5,500., plus interest from January 14, 1969, with costs to be taxed.

Dated: New York, N. Y., May 23, 1974.

RAYMOND F. BURGHARDT  
Clerk





## PLAINTIFF'S EXHIBIT 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

SHINKO BOEKI CO., LTD.,	:	
Plaintiff,	:	
-against-	:	<u>STIPULATION</u>
S.S. PIONEER MOON, her engines, boilers, etc.,	:	70 Civ. 329
-and against-	:	
UNITED STATES LINES CO., INC.,	:	
Defendant.	:	

-----X

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that:

If Captain Konno were called as a witness he would testify (a) that he is a marine surveyor for Lloyds at Yokohama who were retained by plaintiff to conduct a survey of the shipment concerned in this case; (b) that he conducted such survey and prepared and submitted the attached report; and (c) that his testimony would be in accordance with the matters stated therein.

Dated: New York, New York  
November 1, 1972

BIGHAM ENGLAR JONES & HOUSTON  
Attorneys for Plaintiff

By Richard E. Repetto  
Counsel to the Firm

KIRLIN, CAMPBELL & KEATING  
Attorneys for Defendant

By Richard E. Repetto  
Member of the Firm

## Plaintiff's Exhibit 1

Should any of the information called for in this report not be available, the reason for the omission should be stated

LLOYD'S



SCHEDULE C

DS-75/69 (0072)

STANDARD FORM OF

## SURVEY REPORT (GOODS)

ORIGINAL

for use by LLOYD'S AGENTS and SUB-AGENTS only

This report is issued for use in connection with the claim against the parties responsible, but does not imply that the loss is recoverable from Underwriters. This must depend upon the terms of the Policy of Insurance.

1.—(a) Name of Consignee of goods specified in annexed Schedule	(a) Shinko Book Co., Ltd.
(b) Name of Applicant for survey	(b) - do -
(c) If goods transhipped, name(s) of original carrying vessel(s) and of transhipment port(s)	(c) -
(d) Name of vessel from which goods discharged	(d) "PIONEER MOON"
(e) Port at which goods discharged	(e) Yokohama.
(f) Date of arrival of vessel at port of discharge	(f) 14th January, 1969.
(g) If landed by lighter, date of discharge into lighters	(g) 14th - 16th January, 1969.
(h) Date goods landed at port of discharge	(h) 16th & 17th January, 1969.
(i) State reason for delay, if any, in lighter	(i) No delay.
2.—(a) Was a clean receipt given to vessel on discharge?	(a) No.
(b) If not, then state exceptions noted on receipt	(b) See 22.
(c) Was a clean receipt given to lighter on landing?	(c) No.
(d) If not, then state exceptions noted on receipt	(d) -
3.—(a) Date of receipt of goods by Customs	(a) 16th & 17th January, 1969.
(b) Condition of goods at that time—state exceptions noted by Customs	(b) As in 2-(b)
(c) Date of delivery of goods from Customs	(c) Not cleared yet as on the date of survey.
(d) Condition of goods at that time—state exceptions noted on receipt	(d) -
4.—(a) Date of delivery to place where survey held	(a) 16th & 17th January, 1969.
(b) Delay, if any, in taking delivery stated by Consignee to be due to	(b) No delay.
5.—(a) External condition of packages when delivered to place where survey held, as reported by Consignee	(a) Stated: as in 2-(b).
(b) Was a clean receipt given at the time of delivery? If not, state exceptions noted on receipt	(b) No.
(c) External condition of packages at time of survey	(c) See SCHEDULE.
6.—Date of application for survey	14th January, 1969.
7.—(a) Delay, if any, in applying for survey due to	(a) No delay.
(b) If survey not held in Consignee's premises, state Consignee's reason for not taking delivery	(b) Survey held aboard the vessel and at the bonded open area under the control of Consignees.
8.—Date and place of survey (State, for example, if in Customs, Customs House warehouse, Consignee's warehouse or on quay. If not at port of discharge, state name of place where surveyed.)	14th, 16th & 17th January, 1969 aboard the vessel lying at 'G' Berth, North Pier, thence at Centre Pier Bonded Open Area, Yokohama.
9.—(a) Nature of exterior and interior packing (Describe in detail)	(a) Portable steel tanks (Carrier's).
(b) New or second-hand?	(b) Slightly torn or rusty as normal.
(c) Whether customary?	(c) Customary.
10.—(a) Description of loss/damage	(a) Tanks broken and contents empty/slack or contaminated.
(b) Cause, after examination, attributed by the Surveyor to (The Surveyor should state, if possible, the circumstances in which loss/damage arose referred to occurred.)	(b) Insufficient securing and heavy weather in transit.



## Plaintiff's Exhibit 1

11.—Is Lloyd's Agent aware of any casualty suffered by the carrying vessel to which the loss/damage found might be attributable? If so, brief details should be given.	Yes.
12.—Has the shipping invoice been inspected?	Yes, a typed copy.
13.—On the date of compromise or sale, the arrived sound market value of the damaged goods amounted to (State whether Duty Paid or in Bond.)	To be substantiated by documentary evidence in the event of claim.
14.—In the interest of all parties concerned, the damage has been assessed by way of compromise, and an allowance on arrived sound market value has been agreed amounting to	As per annexed SCHEDULE.
15.—No compromise being agreed with Consignee, the damaged goods were with our approval sold by public sale or private tender for account of Consignee. The proceeds, as per attached account sales, amounted to (If for any reason the proceeds have not been taken over by the Consignee, Lloyd's Agent should explain why.)	-
16.—Duties payable on the goods in sound state are	Duty free.
17.—In view of loss or damage has Consignee applied for a rebate of duty? If so, with what result?	-
18.—(a) Has original/copy bill of lading been inspected? (Delete whichever does not apply.) (b) What is the reference therein to the condition of the goods?	(a) Yes, copy bill of lading. (b) Clean B/L.
19.—(a) Has Consignee given notice of loss/damage to or made claim against Steamship, Railway, other Carriers or Bailees? (b) If not, what does Consignee give as reason? If notice given or claim made state: (c) Date on which Consignee states goods delivered into his custody (d) Date on which Consignee gave notice of loss/damage or made claim and to whom addressed (e) Summary of reply, if any, received (f) Was a survey by Carriers/Bailees and Consignee held? If so, on what date and where?	(a) Yes, against the Carriers. (b) - (c) 17th January, 1969. (d) 17th January, 1969 to United States Lines, Inc., Yokohama. (e) Pending. (f) Yes.
20.—Sterling rate of exchange on date of sale or agreement as to loss was	\$ 1. - = ¥ 357.30
21.—Name of Surveyor appointed by Lloyd's Agent (If Surveyor is a member of Lloyd's Agent's staff, this fact should be indicated.)	Capt. H. Konno, a member of Lloyd's Agents' staff.

## 22.—Further remarks:

NOTE: If there has been any delay in holding survey or in issuing report the reasons must be stated.

## Remarks on cargo B/N:-

- #59176 slightly dented (2) points holed & cont's empty.
- #60159 slightly dented cont's unknown.
- #60179 heavily dented & (7) points holed cont's empty.
- #61011 slightly dented cont's unknown.
- #61004 heavily dented (3) points holed & cont's empty.
- #60160 heavily dented & (4) points holed & cont's empty.
- #61007 heavily dented & holed & cont's empty.
- #61014 heavily dented & bottom side (3) points holed & bottom 2" x 10" holed & cont's empty.
- #61018 heavily dented & bottom side (3) points holed & cont's empty.
- #62354 heavily dented top side leaking cont's app. full.
- #61017 heavily dented & (3) points holed cont's empty.
- #59180 top cut about 10 cm cont's empty.
- #62427 slightly dented & (2) points holed cont's empty.
- #61016 slightly dented & (2) points holed cont's empty.
- #62413 slightly dented cont's O.K."

Signature of Surveyor.

Certified correct and approved, and issued without prejudice and subject to the terms, conditions and amount of the Policy of Insurance.

(place) Yokohama, Japan.

The following fees have been paid by Consignee:-

Consignee's Fee ¥ 324.-  
Surveyor's Fee ¥ 82,400.-  
Expenses ¥ 1,420.-

Total ¥ 84,144.-

HK/ca



23rd January, 19 69.

CORNFES & CO. LTD.

Signature of LLOYD'S AGENT(S).

## Plaintiff's Exhibit 1

## SCHEDULE

NOTE: It is the responsibility of the Assured to separate the damaged packages from the sound. In case of shortage, Lloyd's Agents should state if possible, in addition to the following details, the invoiced and landed weights of the goods, also weight at time of survey.

Marks and Numbers	No. of Packages	Description of Goods	Quantities Sound	Quantities Missing or Damaged
SKB FRS 2003	2 LIFT-ON	LIFT-OFF TANKS SYNTHETIC LATEX (SO 11919) F/323		
FRS 2004	8 LIFT-ON	LIFT-OFF TANKS SYNTHETIC LATEX (SO 20058) F/325		
SKB FR-S 2004 YOKOHAMA PROTECT FROM FREEZING	7 LIFT 7 LIFT 7 LIFT	- do - - do - - do -	(SO 11262) F/299 (SO 11263) F/300 (SO 11264) F/301	
FRS-223 (SR 5230)	3 LIFT	- do -	(SO 11435) F/303	
	34 tanks.		19 tanks	15 tanks.
FOUND UPON SURVEY:-				
ABOARD THE VESSEL "PIONEER MOON", LYING AT BERTH 'G', NORTH PIER				
According to the information obtained from all of the parties concerned, the vessel loaded the above (34) tanks of SYNTHETIC LATEX at Baltimore, (11) tanks of which being stowed into No. 2 Hatch, (8) tanks into No. 3 Hatch and (15) tanks into No. 4 Upper 'Tween Deck where the cargo was secured with insufficient lashing wires despite much broken space being left, which caused the LATEX tanks to run, jump heavily in heavy weather encountered en route on the 4th/5th/6th/7th/9th January, 1969, until the tanks were crushed, broken and holed with the contents slack or entirely leaked out.				
Upon opening the hatch, the tanks were found to be more or less damaged as noted on cargo boat-notes and the contents slack or leaking.				
AT BONDED OPEN AREA, CENTER PIER, UPON LANDING				
Nos. 62427, 61004, 61007, 61018, 60174, 61016, 61014, 60160 & 61017	(9) tanks	Bearing clear signs of having been struck outwardly, bodily crushed/deformed/bulged to various extents, cut/broken/torn/holed in parts in various degrees, and contents entirely empty. Total Net Weight as per Certificate ..133,060 Lbs.		
Nos. 61011, 60166, 62413 & 62354	(4) tanks	Outwardly in order and no shortage found upon weighing as follows:- Total Net Weight as per Certificate ..60,340 Lbs. Total Tare Weight .....11,600 " Total Gross Weight ..... 71,940 Lbs. Total arrived Gross ..... 32,930 Kgs. or 72,598 Lbs.		
- P. T. O. -				



## Plaintiff's Exhibit 1

Nos. 59176 & 59180 .... (2) tanks .... Slightly broken and contents found to be short as follows:-

Total Net Weight as per Certificate ..30,130 Lbs.  
Total Tare Weight ..... 5,800 Lbs.

Total Gross Weight ..... 35,930 Lbs.

Total Arrived Gross ..... 3,780 Kgs.  
or 8,333 Lbs.

Shortage in weight ... 27,597 Lbs.

2,533 lbs.

59176 --- 1.950 G --- 421

59180 --- 1.830 G --- D

In addition, the remaining contents of 2,533 Lbs. in the above (2) tanks were found to be contaminated with a considerable amount of held dust and/or foreign material and were rejected by the Consignees by reason of being entirely unfit for the intended purpose, which are, therefore, recommended to be disposed of at the earliest opportunity in the best interests of the parties concerned.

(19) tanks .... Not examined, as these were stated to be sound.

(34) tanks.

Issued without prejudice.

o o o

## PLAINTIFF'S EXHIBIT 2

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
SHINKO BOEKI CO., LTD.,

Plaintiff,

-against-

S.S. PIONEER MOON, her engines,  
boilers, etc.,

-and against-

UNITED STATES LINES CO., INC.,

Defendant.  
-----x

STIPULATION

70 Civ. 329

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that:

1. (a) If John Rehme, a marine surveyor and consulting engineer, with an office at 108 Key Highway, Baltimore, Maryland, were called as a witness, he would testify that he witnessed the weighing of the latex referred to in the complaint, at the time it was loaded into 34 portable tanks laden on the S.S. PIONEER MOON.

(b) that the said 34 tanks were loaded with the quantities of latex shown in his certificate, dated December 13, 1968, which is based upon data recorded by him during the course of the weighing, a copy of said certificate being annexed hereto and marked "Plaintiff's Exhibit A".

(c) that he took top and bottom samples from each of the said 34 tanks which were forwarded to James F. Walter, a chemist in the employ of Firestone International Co., Akron, Ohio for tests as to quality.

2. (a) that if the said James F. Walton ~~was~~ called as a witness he would testify that he is a chemist in the employ of Firestone International Co. and that upon receipt of the samples referred to in Paragraph 1 (c) hereof he conducted analyses thereof which disclosed that the product was sound and met the public specifications of the shipper, Firestone International Co.



## Plaintiff's Exhibit 2

3. That if C.A. Hinokuma were called as a witness he would testify that he is the Managing Director of Nippon Yuryo Kentei Kyokai (Japanese Oil Inspectors Corp.) Yokohama, marine and general surveyors, which firm was employed by plaintiff to confirm the weights and condition of the latex contained in the tanks laden on the S.S. PIONEER MOON on the voyage in question. Upon arrival at Yokohama, that staff surveyor, R. Miyazki, an employee of said Nippon Yuryo Kentei Kyokai attended upon said weighing and obtained the data shown on the attached six weight certificates, marked Exhibits B1 to B6, inclusive, respectively; (b) that he would further testify that the said certificates, which were signed by Koji Hayashibe, a Director of his firm are in his custody, and are records of his firm, made in the usual course of business, and that it was the regular course of business to make and keep such records.

4. That if Captain Konno were called as a witness he would testify that he is a marine surveyor for Lloyds at Yokohama who were retained by plaintiff to conduct a survey of the aforementioned shipment; that he conducted a survey and obtained the weight data contained in the attached certificates, viz., Exhibits B1 to B6 inclusive and that the said six weight certificates annexed hereto, marked Plaintiff's Exhibits B1 to B6, respectively were issued by Japanese Oil Inspectors Corp.

Dated: New York, New York  
~~December~~  
 March 23, 1971

*Bigman Engle Inc. & Skoston*  
 Attorneys for Plaintiff  
*K. C. G. & R. K. R. R.*  
 Attorneys for Defendant

## DEFENDANT'S EXHIBIT A

DEPOSITION of JOHN B. GRIMES, taken on  
behalf of the Defendants, taken before Norman  
Grant, a Notary Public of the State of New York,  
pursuant to Federal Rules of Civil Procedure,  
Notice and stipulations between counsel.

- - - -

J O H N            B.            G R I M E S, called as a  
witness, having first been duly sworn by the  
Notary Public, testified as follows:

DIRECT EXAMINATION BY

MR. RIPETTO:

Q     Mr. Grimes, will you state your name and  
address for the record, please?

A     John B. Grimes, 94-30 Park Lane South, Wood-  
haven, New York, 11421.

Q     By whom are you employed?

A     I am employed by Firestone International Com-  
pany, Division of Firestone Tire and Rubber Company,  
Akron, Ohio.

Q     Were you employed by Firestone in 1968?



Grimes

4

2 A Yes, I was.

3 Q What was your position with the company at  
4 that time?

5 A Chief Clerk.

6 Q What was your area of responsibility with  
7 the company, what did you do?

8 A I was assistant to our Traffic Manager, Mr. A. T.  
9 Marubbio. My duties were to book cargo with various  
10 steamship companies for our international office upon  
11 request of our main office in Akron, Ohio or vendors.

12 Q What is your current position with Fire-  
13 stone?

14 A Supervisor of International Export Traffic.

15 Q In 1969, did you have anything to do with  
16 a shipment of liquid latex carried on board the  
17 vessel PIONEER MOON?

18 A Yes, I did.

19 Q Could you tell us, briefly, what your  
20 connection with that shipment was?

21 A On the date of November 25, 1968, we received,  
22 by teletype, from our main office in Akron, a request  
23 to book X number of tanks aboard a vessel to arrive  
24 at Yokohama in the early part of December. On the  
25 date of November 25th of that year, I made the book-

Grimes

5

2 ing with U.S. Lines for a total amount of 24 tanks  
3 against various orders, and I booked this on the  
4 S.S. PIONEER MOON, scheduled to clear Baltimore  
5 December 6th with an E. T. A. of January 3, 1969.

6 Q Who did you contact at U.S. Lines about  
7 this shipment?

8 A At that time, it was Mr. Stengel, the Far East  
9 Booking Department. I believe it was Mr. Stengel.  
10 In any event, it was with the Far East Booking De-  
11 partment.

12 Q Where was that located?

13 A New York City, New York.

14 Q Will you tell us, as best you can recollect,  
15 what your first contact with the U.S. Lines was, in  
16 regard to this shipment and what was said?

17 A The only thing, to the best of my recollection,  
18 it would be just the booking of 24 tanks, making  
19 available 24 lift on-lift off tanks to stow latex  
20 on the given ship PIONEER MOON.

21 Q Were these tanks owned by PIONEER MOON?

22 A Yes, they were.

23 Q So, your booking was to reserve space and  
24 tanks or to reserve tanks?

25 A These are 24 latex tanks, right, with the under-



## Defendant's Exhibit A

Grimes

6

2 standing, which was the basic understanding at that  
3 time that the tanks would be made available on the  
4 deck of the vessel for the pumping in of latex, and  
5 the understanding also, if I may continue, that the  
6 tanks should be clean and ready for loading upon in-  
7 spection by our representatives.

8 Q To your knowledge, were the tanks loaded  
9 on the deck of the vessel?

10 A To my knowledge, no, but this was handled, I  
11 believe at that time, by Mr. Brockett or Mr. Hedges,  
12 our Firestone representatives in Baltimore.

13 Q The on-deck feature has me confused. Do  
14 you mean the latex had to be delivered to the tanks  
15 when the tanks were on the vessel or that tanks were  
16 to be stowed on deck after they were loaded?

17 A There is no clear understanding at the time of  
18 the booking. It was just to make available these  
19 tanks in clean condition.

20 Q When you contacted U.S. Lines about booking  
21 these tanks, was there any discussion as to freight  
22 rates?

23 A No, no discussion of freight rates.

24 Q Did you know what the applicable freight  
25 rate was?

## Defendant's Exhibit A

Grimes

7

2 A The established freight rate that was quoted  
3 in the tariff.

4 Q Were you familiar with the terms of the  
5 applicable tariff at that time?

6 A To a certain point, as far as the in and out  
7 pumping.

8 Q But you weren't particularly concerned with  
9 the dollar freight amount?

10 A No. If I can inject, at that time, the only  
11 one rendering that service to the ship was U.S. Lines,  
12 this type of operation, lift on and lift off tanks.

13 Q When the booking was made, was it your  
14 understanding that bills of lading would be issued?

15 A Yes.

16 Q Were bills of lading issued for this cargo?

17 A Yes.

18 Q Do you know who made out or filled in the  
19 particulars that appear on the face of the bills of  
20 lading?

21 A The handwritten notations?

22 Q Other than the printing information?

23 A I don't get you on that point. The printed form  
24 we filled out. You mean other than the consignee  
25 and other information?



Grimes

8

1  
2 Q Right?

3 A We would prepare that up to the point, except  
4 the weights at that moment.

5 Q Let me show you a document headed, U.S.  
6 Lines Outward Short Form Bill of Lading Number 18,  
7 dated December 13, 1968, and ask you if you are  
8 familiar with it and can identify it?

9 A No, this is not the same copy that we have in  
10 our possession, and I have never seen this copy be-  
11 fore.

12 Q Do you have a copy of the bill of lading  
13 that was issued for this shipment?

14 A Yes, we do.

15 Q I hand you a Xeroxed copy of the face of  
16 the bill of lading and ask you to identify it?

17 A The bill of lading is similar to ours, with the  
18 exception, or the same as ours, with the exception  
19 that it is stamped, "on board", which is a require-  
20 ment of our letter of credit.

21 Q And this bill of lading is also stamped,  
22 "original"?

23 A That's correct.

24 Q And the copy you have is a non-negotiable  
25 copy of the bill of lading?

2 A That's correct.

3 Q This is a copy of the original bill of  
4 lading that was forwarded to the consignee by Fire-  
5 stone, to the best of your knowledge?

6 A Yes, I would say this is the copy.

7 MR. RIPETTO: Will you mark this as De-  
8 fendant U.S. Lines' Exhibit 1 for identification?

9 (Copy of bill of lading was marked De-  
10 fendant U.S. Lines' Exhibit 1 for identification.)

11 Q Referring to Defendant U.S. Lines' Exhibit  
12 1, will you tell me who filled in the information on  
13 the face of the bill of lading under the heading,  
14 "Particulars furnished by Shipper"?

15 A The typewritten portion?

16 Q Yes?

17 A That was performed in this office.

18 Q Prior to booking this shipment, had you  
19 made previous bookings with U.S. Lines?

20 A Yes, we did.

21 Q Were you familiar with their bills of lad-  
22 ing?

23 A Yes, we were.

24 Q Now, the bill of lading that has been mark-  
25 ed Exhibit 1 is a short form bill of lading, is that



2 correct?

3 A That's correct.

4 Q Did you have, in 1968, an occasion to see  
5 the long form bills of lading?

6 A To see it or use it?

7 Q To see it?

8 A To see it, probably.

9 Q Did you use any?

10 A No, I don't think we ever had occasion to use  
11 one.

12 Q Did you have the long form available in  
13 your office?

14 A I don't believe so. We just carry, in our office,  
15 the short form bills.

16 Q You were aware, however, there was a long  
17 form bill of lading?

18 A No, I couldn't say that for sure.

19 Q Referring to the back, are you familiar  
20 with the terms on the back of the short form that you  
21 filled in?

22 A Not the actual material, not the actual terms,  
23 no, sir.

24 Q There are terms on back of the short form,  
25 however?

## Defendant's Exhibit A

Grimes

11

2 A Yes, there are.

3 Q And you had these forms available in your  
4 office, then?

5 A Yes, we did.

6 Q Were you familiar with the terms incorpor-  
7 ated on the long form?

8 A Not the actual details. We have a working  
9 knowledge of the terms of these bills of lading.

10 Q Did you have copies of the tariff available  
11 at that time?

12 A I don't think so.

13 Q Were any available to Firestone, do you  
14 know?

15 A Yes, they would be available.

16 Q Was there any written booking note or book-  
17 ing confirmation made up for this shipment?

18 A On our part or the steamship company's part?

19 Q Did you make one up or did you receive one  
20 from U.S. Lines?

21 A No, we have no confirmation from U.S. Lines on  
22 it, but we made the booking and our communication is  
23 based on teletypes and so forth, requesting the book-  
24 ing.

25 Q Do you have a written record or memorandum



Grimes

12

2 that you sent to the U.S. Lines?

3 A No, we do not. This is all verbal.

4 Q Do you know what the freight charge on  
5 this shipment was?

6 A The ocean freight charge or the inland freight  
7 charge?

8 Q Ocean?

9 A On Bill of Lading Number 18 covering the 24  
10 tanks, the total ocean freight is \$8,658.56.

11 Q And that is based on a gross weight of  
12 what?

13 A A weight of 359,170 pounds.

14 Q Is that gross weight in pounds?

15 A Net weight, contents of tanks, I believe. That  
16 is the weight of the latex itself. No, I am sorry,  
17 the gross weight of the commodity.

18 Q Does the 359,170 pounds include the weight  
19 of the tanks?

20 A It does not.

21 Q Did you have anything to do at that time  
22 with the sale of this shipment to Shinko Boeki Co.,  
23 Ltd.?

24 A No.

25 Q And you are not familiar with the terms of

2 that sales contract, then?

3 A No.

4 Q Did you or anyone acting for Firestone,  
5 declare the actual value of this cargo to U.S. Lines?

6 A At the time of the booking?

7 Q Yes?

8 A No.

9 Q At the time of shipping?

10 A No, verbally, but the export declaration shows  
11 that.

12 Q You didn't insert a value on the bills of  
13 lading that you made up?

14 A No, we do not.

15 MR. RIPETTO: That is all.

16 CROSS-EXAMINATION BY

17 MR. PREM:

18 Q Are you familiar with the practice that  
19 existed in Baltimore at or about the time this ship-  
20 ment was made, with relation to the mechanical means  
21 by which tanks were removed from the shore to the  
22 deck of the steamer, in other words, who performed  
23 that operation of transferring the tanks that we are  
24 now referring to, from shore to the ship?

25 A I could not actually, clearly indicate that, not



2 being on the scene, but through word of mouth. From  
3 our representatives down there, we knew how they  
4 were handling it, but it was under his supervision  
5 and the supervision of the inspectors.

6 Q What is the name of that representative  
7 you are referring to?

8 A Either Mr. Brockett, at that time, or Mr. Hedges.

9 Q Does Firestone International have any  
10 facilities or equipment down at Baltimore, where  
11 they physically transfer tanks from the shore to the  
12 ship?

13 A I don't believe they loaded them. They have  
14 their own facilities, but I don't believe they load-  
15 ed these tanks or brought them to their facilities  
16 for pumping. This was performed at the U.S. Lines'  
17 facilities, to the best of my knowledge.

18 Q Do you have any knowledge as to who does  
19 the securing of the tanks once they are loaded on  
20 the ship?

21 A We believe that this is the responsibility of  
22 the steamship company. May I say a word on that?  
23 One part is just coming to light. At this time of  
24 the year, these products are subject to freezing,  
25 and we emphasize then, at the time of our booking,

2 that this commodity must be protected from freezing,  
3 so that in itself, would eliminate stowage on deck,  
4 and that is specified on the ocean bill of lading.

5 Q With relation to the notation on the face  
6 of the bill of lading, "Free In and Out Pumping for  
7 Account of Owner of Cargo", what is your understand-  
8 ing of that notation?

9 A Our understanding of that notation is, that we  
10 would be responsible for the equipment, hooking up  
11 of any pumps to physically pump the latex into the  
12 tanks furnished by the steamship company. A further  
13 understanding of this was, an agreement that we had  
14 with the steamship company that the tanks would be  
15 made available on deck to eliminate any possibility  
16 of heavy lift charges.

17 Q Do you have an opinion as to whether the  
18 commodity shipped by Firestone International on this  
19 PIONEER MOON occupied the entire reach of the vessel?

20 A No.

21 Q You mean you have no knowledge or it did  
22 not?

23 A It did not.

24 Q It did not occupy the entire stowage space  
25 of the vessel?



2 A It did not.

3 Q Did you have any contract with U.S. Lines  
4 other than the bill of lading which has been marked  
5 Defendant U.S. Lines' Exhibit 1?

6 A We also had Bill of Lading Number 17.

7 Q In other words, the two bills of lading,  
8 17 and 18, constitute the entire written contract  
9 that you had with U.S. Lines for this shipment?

10 A On that given vessel, yes.

11 MR. PREM: That is all I have.

12 RE-DIRECT EXAMINATION BY

13 MR. RIPETTO:

14 Q This liquid latex, I assume you make a  
15 fair number of shipments of this commodity?

16 A Yes, we do.

17 Q Is it ever shipped other than in tanks?

18 A We have shipped it in 55 gallon drums and we  
19 also shipped it in deep well tanks and tank trailers.

20 Q I am talking about ocean transportation?

21 A Yes, ocean transportation.

22 Q What do you mean by a deep well tank?

23 A A given hatch that has been prepared, cleaned  
24 and so forth, port or starboard of a vessel.

25 Q That would be a bulk shipment?

Grimes

17

1  
2 A That would be a bulk shipment.

3 Q Where it is pumped directly into the vessel  
4 and then pumped out of the vessel at the other end?

5 A That's correct.

6 Q Do you have any knowledge as to why this  
7 shipment moved in the type of tanks that it did?

8 A To the Far East at that time, that was the only  
9 type of operation available for bulk shipment of  
10 latex.

11 MR. RIPETTO: I have no further questions.

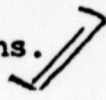
12 RE-CROSS-EXAMINATION BY

13 MR. PREM:

14 Q What is the capacity of one of these tanks?

15 A 2,000 gallons.

16 Q How many gallons could be placed into one  
17 of the drums that you referred to?

18 A 55 gallons. 



## DEFENDANT'S EXHIBIT B

## UNITED STATES LINES

R

OVERING CARRIER TO STEAMER

CAR NUMBER-REFERENCE

FORWARDING AGENT-REFERENCES-FMC NO.

FMC LIC 269 F-5260

EXPORT DEC. NO.

OUTWARD SHORT FORM BILL OF LADING  
NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER

SHIPPER

FIRESTONE INTERNATIONAL COMPANY, AS AGENTS FOR SHINKO BOEKI CO. LTD.

CONSIGNED TO  
ORDER OF SHIPPER

ADDRESS ARRIVAL NOTICE TO

SHINKO BOEKI CO. LTD.  
SHIBUYA CENTRAL BUILDING  
23 UDAGAWACHO, SHIBUYA-KU  
TOKYO, JAPAN

ALSO NOTIFY

VESSEL

LORNER BOON 12/6/65

FLAG

PIER

PORT OF LOADING

PORT OF DISCHARGE (Where goods are to be delivered to consignee or on-carrier)  
YOKOHAMA

FOR TRANSHIPMENT TO (If goods are to be transhipped or forwarded at port of discharge)

## PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	MEASURE- MENT	GROSS WEIGHT IN POUNDS
SKB FR-S 2004 YOKOHAMA PROTECT FROM FREEZING	7	FREE IN AND OUT PUMPING FOR ACCOUNT OF OWNER OF CARGO	7416	359,170
Same as above	7	LIFT ON LIFT OFF TANKS SYNTHETIC LATEX. (SO 11262) F/299		
	7	LIFT ON LIFT OFF TANKS SYNTHETIC LATEX. (SO 11263) F/300		
FDS-223 (SR 521)	13	LIFT ON LIFT OFF TANKS SYNTHETIC LATEX. (SO 11264) F/301		
		LIFT ON LIFT OFF TANKS SYNTHETIC LATEX. (SO 11455) F/303		
		"PROTECT FROM FREEZING"		

ON BOARD

DEC 13 1968

UNITED STATES LINES, INC.  
S. Otto

FREIGHT PREPARED:

THESE COMMODITIES LICENSED BY U.S. FOR ULTIMATE DESTINATION  
JAPAN; DIVERS ON CONTRARY TO U.S. LAW PROHIBITED.

FREIGHT AND CHARGES PAYABLE AT

ALL CHARGES EX SHIPS  
TACKLE FOR ACCOUNT OF CARGO

359,170 5400	PER 2240 LBS.	\$ 8,658	56
...	PER 2240 LBS.	\$	
...	PER 2000 LBS.	\$	
...	PER 100 LBS.	\$	
...	PER 40 CU. FT.	\$	
...	PER 40 CU. FT.	\$	
...	PER CU. FT.	\$	
TOTAL		\$ 8,658	56

RECEIVED the goods or the containers, vans, trailers, palletized units or other  
packages said to contain goods herein mentioned, in apparent good order and condition,  
except as otherwise indicated herein, to be transported to the port of discharge named  
(TERMS OF THIS BILL OF LADING CONTINUED ON REVERSE SIDE HEREOF)  
IN WITNESS WHEREOF,THE MASTER OR AGENT OF SAID VESSEL HAS  
SIGNED 3 BILLS OF LADING, ALL OF THE SAME  
TENOR AND DATE, ONE OF WHICH BEING ACCOM-  
PLISHED, THE OTHERS TO STAND VOID.  
UNITED STATES LINES, INC.

BY

B/L No.

18

ORIGINAL

12-13-68

MO. DAY YEAR

DEFENDANT'S EXHIBIT C

Long Form of Bill of Lading.

(Photostats)

[For convenience of Court and Counsel  
this Exhibit is bound in on the opposite page.]





1. In this bill of lading the words "ship" shall include any substituted vessel, and any vessel, craft or other means of conveyance whatsoever owned, chartered, operated or controlled and used by the carrier in the performance of this contract; "carrier" shall, except in the provision against waiver of the provisions hereof, include the ship as defined herein, her owner, operator and demise charterer, and also any time charterer or person to the extent bound by this bill of lading, whether acting as carrier or bailee; "shipper" shall include the party named as such in this bill of lading and the person for whose account the goods are shipped; "consignee" shall include the holder of this bill of lading, properly endorsed, or the person who owns or is entitled to or receives delivery of the goods; "person" shall include any individual, corporation, partnership and any other entity; "live animals" shall include birds, reptiles, fish and all animate things other than human beings; "charges" shall include freight and all expenses, costs, indemnities, damages and money obligations whatsoever payable by, or chargeable to, or for account of the goods, shipper or consignee or any of them, regardless of whether sustained, incurred or paid by the carrier in the first instance; "at the risk and expense of the goods" shall mean, in addition, at the risk and expense of the shipper and consignee; "loss or damage" shall include, in addition to physical loss of or damage to the goods, any loss or damage whatsoever sustained by the shipper or consignee in connection with the goods, including that by reason of delay, non-delivery, misdelivery, deviation or conversion; "transship" and/or "forward" shall mean and refer to transportation by rail, water, land or air or by two or more of such means and whether operated by the carrier or others or whether under another flag; "government" and "authorities" shall each include the United Nations and any similar international organization, and also persons having or purporting to exercise power, control or other functions of a governmental or military nature whether in the name of a sovereign state or of a political subdivision thereof, whether de jure or de facto; "goods" shall mean wares, merchandise and articles of every kind including containers, vans, trailers, palletized units and other packages except containers, vans, trailers, pallets or other packages owned or provided by the carrier; "containers", "vans", "trailers" and "pallets" shall include containers, vans, trailers and pallets designed and intended for repeated use in the transportation of goods, regardless of size and weight and whether or not owned or provided by the carrier or others.

2. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, or, if this bill of lading is issued in a locality where there is in force a Carriage of Goods by Sea Act or ordinance or statute of a similar nature to the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated at Brussels, August 1924, it is subject to the provisions of such act, ordinance, or statute and rules thereto annexed. All the provisions of the applicable Act, ordinance or statute and rules thereto annexed are deemed to be incorporated herein (except as otherwise specifically provided for herein) and nothing herein contained is to be deemed a surrender by the carrier of its rights, immunities, exemptions or liabilities or an increase of any of its responsibilities or liabilities thereunder.

Prior to loading on and after discharge from the ship, the goods, while in the carrier's custody, shall be at the sole risk of the shipper, consignee or owner of the goods with respect to any loss or damage howsoever caused and even though due to negligence, except, if liability for any such loss or damage is to be determined in a port or place where such stipulation against liability is invalid or unenforceable, then the provisions of said Carriage of Goods by Sea Act of the United States (except subdivisions 2 (j) and (k) of Section 4 thereof and except as otherwise specifically provided for herein) shall govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the carrier and during such time the carrier shall not be liable in any capacity whatsoever for any loss or damage howsoever or wheresoever occurring unless shown to be caused by the negligence of the carrier other than negligence in the management of the ship.

Also prior to loading and after discharge, the carrier shall not be liable in any capacity whatsoever for any loss or damage, whenever or wherever occurring and not at any time with respect to goods or property covered by Clauses 10 and 11 hereof, arising or resulting from hostilities, or from acts of sabotage or of malicious persons, or from strikes, lockouts, stoppages or restraints or lack of labor or labor troubles from whatsoever cause, whether of employees of the carrier or others and whether partial or general, or whether existing or anticipated at the time of delivery of the goods to the carrier or at any other time.

3. The carrier shall also be entitled to the full benefit of all rights and immunities and all limitations of, or exemptions from, liability contained in any law of the United States, including but not limited to those provided in or authorized by Sections 4281 to 4286, inclusive, and Section 4289 of the United States Revised Statutes and amendments thereto, or of any other country or place whose laws shall be applicable. This bill of lading shall not be deemed to be or give rise to a personal contract of the carrier. Nothing in this bill of lading, expressed or implied, shall be deemed to waive or operate to deprive the carrier of, or lessen the benefits of, any such rights, immunities, limitations or exemptions.

4. (a) Because of the relationship between them and as the carrier requires persons and companies to perform or assist it in performance of work or services undertaken by it in this contract, it is expressly agreed between the parties hereto that the master, officers, crew members, contractors, stevedores, longshoremen, agents, representatives, employees or others used, engaged or employed by the carrier in the performance of such work or services, shall each be the beneficiaries of and shall be entitled to the same, but no further, exemptions and immunities from and limitations of liability which the carrier has under this bill of lading, whether printed, written, stamped hereon or incorporated by reference.

(b) Without limitation or restriction of the exemptions and immunities from and limitations of liability provided for in subdivision (a), the persons and companies mentioned therein shall be entitled to the same, but no further, benefits which the carrier has under Clauses 24 and 25 of this bill of lading.

(c) Without limitation or restriction of the exemptions and immunities from and limitations of liability provided for in subdivisions (a) and (b), the persons and companies mentioned therein shall be entitled to the same, but no further, benefits which the carrier has under the U. S. Carriage of Goods by Sea Act, including but not limited to Sections 3(6), 4(1), 4(2)(a), 4(2)(b), 4(2)(q) and 4(5) of said Act.

5. The voyage may or may not include all usual, scheduled, geographic, direct, customary, ordinary or advertised routes, ports or places, whether or not named or disclosed in this bill of lading.

As often as and for any reason whatsoever which the carrier or master may deem advisable, whether relating to the current or a prior, intermediate, subsequent, or overlapping voyage, or to matters occurring, known, or anticipated before or after receipt or loading of the goods, and whether or not the voyage may have commenced, the ship, at any stage of the voyage and without notice to the shipper or consignee: (a) may proceed under any conditions of sea and weather, depart from or change the intended, usual, scheduled, geographic, direct, customary, ordinary or advertised route and proceed in any direction by any route whatsoever, or return to or call at or stay or delay at any ports or places in any rotation, sequence or order, backward or forward, or omit calling at any ports or places; and (b) may also, at any time or place whatsoever, with or without the goods aboard, proceed in tow, adjust compasses, carry live stock, deck cargo and dangerous goods, drydock, go on ways or to repair yard, shift berths or places in port, lie on bottom or aground in berth, make trial trips or tests, take fuel or stores at any place, lie at anchor or moorings, sail or proceed in or out of ports or elsewhere without pilots, whether or not pilots are compulsory or customary and available, tow and assist vessels or craft in any situation, or save or attempt to save life or property whether the property be that of the carrier or others, including the liberty to depart from her course to any extent for any of such purposes. The provisions of this clause are not to be restricted by any words of this bill of lading whether printed, stamped or incorporated herein or by prior notice or advertisement.



6. In any situation whatsoever or whenever occurring including strikes and work stoppages of any kind and whether existing or anticipated before the commencement of, or during the voyage, which in the judgment of the carrier or the master is likely to give rise to risk of capture, seizure, arrest, detention, injury, damage, delay or danger, detriment or disadvantage to, or loss of any goods, the ship, or any persons, or to make it unsafe, imprudent, inadvisable or unlawful for any reason to receive, keep or load the goods or commence or proceed on or continue the voyage or to enter or discharge or disembark the goods or passengers at any port, the carrier or the master (a) before, during or after receipt or loading of the goods or before the commencement of the voyage, may decline to receive, keep or load the goods or may discharge them or any part thereof and may require the shipper or person entitled thereto to take delivery at port of shipment or elsewhere and if he fails to do so, may warehouse or store or hold the goods; or (b) at any time and whether or not the ship is proceeding toward or entering the port of discharge or the usual or intended place of discharge therein, may discharge the goods into any depot, lazaretto, craft, or other place; (c) may have the ship proceed or return, directly or indirectly, to or stop at any port or place, and discharge the goods, or any part thereof, at any such port or place into craft or into or on any other place whatsoever; or (d) may retain the goods, or any part thereof, on board until the return trip or until such time as the carrier or the master deems advisable and discharge the goods, or any part thereof, into craft or into or on any other place whatsoever at port of shipment or elsewhere; or (e) at port of shipment or elsewhere, substitute another vessel or may transship or forward the goods, or any part thereof, by any means, but always at the risk and expense of the goods.

Any measures or procedure whatsoever authorized by this clause may be taken without notice to the shipper or consignee and shall be considered as taken as agent of the shipper and consignee and at their risk and expense, but without prejudice to any lien of the carrier. Any disposition of the goods pursuant to this clause shall constitute complete delivery of the goods and performance of this contract by the carrier who shall be free of further responsibility. For any and all services rendered as herein provided, the carrier shall be entitled to extra compensation, including, but not limited to, proportionate additional freight if the length or duration of the voyage is increased.

(TERMS CONTINUED FROM OVERPAGE)

7. The carrier, master and ship shall have liberty to comply with any orders, directions, regulations, requests or suggestions, including any such which may be given or effected pursuant to or by reason of any agreement or undertaking entered into or considered advisable by the carrier or master, whether or not relating to the ship, the goods, other cargo or to passengers, crew, or other persons aboard, howsoever, whensoever and wheresoever given by or received from the government of any nation or department thereof or by any person acting or purporting to act with the authority of such government or department, or by any committee or person having or purporting to have, under the provisions and terms of the war risk insurance on the ship, the right to do so or to approve the voyage. Any disposition whatsoever of the goods pursuant to this clause shall constitute delivery and be a fulfillment of the contract of carriage by the carrier, which shall not be under any further obligation, and the goods shall thereafter be solely at their own risk and expense. For any and all expenses or charges incurred by the carrier in connection with any such compliance, the carrier shall be entitled to extra compensation including, but not limited to, proportionate additional freight if the length or duration of the voyage is increased.

The ship may carry contraband, explosives, munitions, warlike stores, dangerous and hazardous cargo, and may sail armed or unarmed, with or without convoy, and with or without lights.

8. The carrier or master, in its or his discretion, at any time and place, whether or not the reason for its or his action or inaction was known at time of receipt of the goods, without notice (a) may substitute another ship, whether operated by the carrier or others, or of a different flag, type or speed, or whether before, during or after loading the goods or any part thereof, and whether the substituted ship arrives or departs or is scheduled to do so before or after the ship named herein; (b) may, in case the goods or any part thereof are shut out, have the ship proceed without the goods or any part thereof and the goods may be forwarded in whole or in part by any means; (c) may, if the goods or any part of them are damaged or lost or in danger of damage or loss or of becoming worthless or subject to charges disproportionate to their value, or because of their condition, take any measures to save, protect, recondition, recover possession of, sell, return to shipper, hold, store or otherwise deal with or dispose of the goods or any part of them, or forward the goods or any part of them by any means to or toward port of discharge; and (d) may, if there shall be a forced interruption, abandonment or frustration of the voyage at the port of loading or elsewhere or because of the need of repair to the ship or of the inability of the ship to prosecute the voyage promptly at the port of loading or elsewhere, substitute another vessel or may forward the goods or any part thereof by any means.

The carrier is not required to, and does not undertake to, deliver the goods at port of discharge or elsewhere at any particular time or to meet any market or in time for any particular purpose or use nor does it undertake that the ship or substitute ship will sail or arrive at any stated or scheduled time. The carrier shall not be liable for any loss or damage arising or resulting from delayed or earlier arrival of the goods or any damage or expense incurred by the shipper or consignee because of any change in date or time of sailing or arriving.

All such measures, procedures or acts taken pursuant to this clause shall be at the risk and expense of the goods.

9. With respect to containers, vans, trailers, palletized units and other packages not packed by the carrier, it shall not have any responsibility or liability for the safe and proper packing or stowage of the contents of such containers, vans, trailers, palletized units or other packages.

The shipper, whether principal or agent, represents and warrants that the goods are properly described, marked, secured and packed in containers, vans, trailers, palletized units or other packages and may be handled in ordinary course without damage to the said containers, vans, trailers, palletized units or other packages, the ship, or property or persons and guarantees the correctness of the particulars, weight of each and the description of the goods and agrees to ascertain and to disclose in writing on shipment, any condition, nature, quality, ingredient or characteristic of the goods of, or which might indicate they are of, an inflammable, explosive, corrosive, radioactive, noxious, hazardous or dangerous nature, or any condition, nature, quality, ingredient or characteristic that may cause damage, injury or detriment to the goods, other property, the ship or to persons, and for the failure to do so the shipper agrees to be liable for and fully indemnify the carrier and hold it harmless in respect of any injury or death of any person and loss or damage to cargo or property. The carrier shall not be concluded as to the correctness of any such mark, descriptions or representations.

If at any time the goods, whether ashore or afloat, are, in the judgment of the carrier or master or of the health or other authorities, spoiling, decayed, injurious, offensive, unfit for further carriage or storage, or dangerous to health or other property, or if the goods are condemned or ordered destroyed by any such authorities, the goods may, forthwith and without notice, be thrown overboard, destroyed, discharged, stored, put ashore at any place or aboard lighters or craft or otherwise disposed of by the carrier, master or others, solely at the risk and expense of the goods, when the carrier's responsibility shall cease, and the carrier shall not be liable for any loss or damage whatsoever.

If any goods that are in fact, or may be considered by any civil or military authorities or the Master to be, inflammable, explosive, noxious, hazardous or dangerous, whether shipped with the knowledge and consent of the carrier or Master as to their nature and character or shipped without such disclosure, shall become a danger to the ship or those aboard, the goods or other property, or any part thereof, may at any time or place be landed, thrown overboard, destroyed or rendered innocuous without compensation to the shipper or consignee and extra charges and expenses, if any, for discharging, lightering, handling, caring for, disposing of or otherwise occasioned by such goods shall be borne by the goods.

10. FRUITS, vegetables, meats and any goods of a perishable nature when accepted may be carried in ordinary cargo compartments or on deck and without special facilities or attention, unless the carrier has made and inserted in this bill of lading a written agreement that such goods will be carried in a refrigerated, chilled, heated, specially ventilated or otherwise specially equipped compartment.

Unless a special agreement is made and inserted in this bill of lading, the carrier does not undertake and shall not be liable for failure to give the goods, whether or not of a perishable nature, any unusual or special care, handling, stowage, storage or facilities not given ordinary non-perishable general cargo, or discharge or deliver the goods into or to any refrigerated, chilled, cooled, ventilated, insulated, heated, drained, dry, moist, or specially equipped place, compartment or other facility, and the shipper represents and warrants the goods do not require any such care or facilities.

11. Live animals, when accepted, are received, kept and carried solely at shipper's risk of accident, disease or mortality and without any warranty or undertaking whatsoever by the carrier that the ship is seaworthy, fitted, manned, equipped and supplied for their reception, carriage and preservation.

With respect to live animals, all risk of loss or damage by perils inherent in or incidental to the carriage of live animals shall be borne by the shipper and the carrier shall have the benefit of all the provisions of this bill of lading not inconsistent with the provisions of this clause and shall have the benefit of all and the same rights, immunities, exemptions and limitations as provided for in Sec. 4 of the United States Carriage of Goods by Sea Act, 1936, excepting subdivisions (1), (2) (j), (2) (q), (3) and (4) thereof. In no event shall the carrier be liable for any loss or damage to live animals arising or resulting from any cause whatsoever, including unseaworthiness, unless affirmatively proved to be due to lack of due diligence or to the fault or neglect of the carrier or those for whom it may otherwise be responsible, but the carrier shall not in any event be liable for any act, neglect or default in the navigation or the management of the ship.

12. Goods stowed in poop, forecabin, deckhouse, shelter deck, passenger space, storeroom, or any other covered-in space shall be deemed to be stowed under deck for all purposes, including General Average.

Goods in containers, vans or trailers, whether packed by shipper or carrier, may be carried on deck at carrier's option and, if carried on deck, the carrier shall not be required to specially note, mark or stamp any statement of on deck carriage on this bill of lading, any custom to the contrary notwithstanding.

With respect to on deck carriage all risk of loss or damage by perils inherent in or incidental to such carriage shall be borne by the shipper or consignee and the carrier shall have the benefit of all the provisions of this bill of lading except those inconsistent with the provisions of this clause, and the carrier shall have as provisions of this clause the benefit of all and the same rights, immunities, exemptions and limitations as provided for in Sec. 4 of the Carriage of Goods by Sea Act of the United States, except subdivisions (1), (2)(j), (2)(q), (3) and (4) thereof as if the same were set forth herein in full. In no event shall the carrier be liable for any loss or damage to on deck carriage arising or resulting from any cause whatsoever, including unseaworthiness, unless affirmatively proved by the shipper or consignee to be due to lack of due diligence or to the fault or neglect of the carrier or those for whom it may otherwise be responsible, but the carrier shall not in any event be liable for any act, neglect or default in the navigation or the management of the ship.

13. As the carrier has no reasonable means of checking the quantity or weight of goods shipped in bulk, the carrier does not represent the quantity or weight of such goods as furnished by the shipper and appearing in this bill of lading as being accurate.

14. Gold, silver, specie, bullion or other valuables, including those named or described in Sec. 4281 of the Revised Statutes of the United States, will not be received by the carrier unless their true character and value are disclosed to the carrier and a special written agreement therefor has been made in advance, and will not, in any case, be loaded or landed by the carrier. No such valuables shall be considered received by or delivered to the carrier until brought aboard the ship by the shipper and there put in the actual possession of, and a written receipt therefor is given by, the master or other officer in charge. Such valuables will only be delivered by the carrier aboard the ship on presentation of bills of lading properly endorsed, and upon such delivery on board, the carrier's responsibility shall cease. If delivery is not so taken promptly after the ship's arrival at the port of discharge, the aforesaid goods may be retained aboard or landed or carried on, solely at the risk and expense of the goods.

15. The carrier or master, in the exercise of its or his discretion and although transshipment or forwarding of the goods may not have been contemplated or provided for herein, may at port of discharge or any other place whatsoever transship or forward the goods or any part thereof by any means at the risk and expense of the goods and at any time, whether before or after loading on the ship named herein and by any route, whether within or outside the scope of the voyage or beyond the port of discharge or destination of the goods and without notice to the shipper or consignee. The carrier or master may delay such transshipping or forwarding for any reason, including but not limited to awaiting a vessel or other means of transportation whether by the carrier or others.

All responsibility of the carrier in any capacity shall altogether cease and the goods shall be deemed delivered by it and this contract of carriage shall be deemed fully performed on actual or constructive delivery of the goods to itself as such agent of the shipper and consignee or to any such person or on-carrier at port of discharge from ship or elsewhere in case of an earlier transshipment.

Pending or during forwarding or transshipping this carrier or the master may store the goods ashore or afloat solely as agent of the shipper and at the risk and expense of the goods and this carrier shall not be responsible for the acts, neglect, delay or failure to act of anyone to whom the goods are entrusted or delivered for storage, handling, or any service incidental thereto.

In case the carrier issues a bill of lading covering transportation by a local or other carrier prior to the goods being delivered to and put into the physical custody of the carrier, it shall not be under any responsibility or liability whatsoever for any loss or damage to the goods occurring prior to or until the actual receipt or custody of the goods by it at the port or place of transshipment and in arranging for the transportation to such port or place where the goods are put in its physical custody, it acts solely as the agent of the shipper.

16. The carrier or master, in the exercise of its or his discretion, may at any time, whether or not customary and without notice, require the goods to be lightered to or from the ship at the risk and expense of the goods and, in this event, the carrier or master may make arrangements for lighterage or use of craft but, in so doing, shall be considered solely as the agent of the shipper and consignee and without any other responsibility whatsoever. The carrier shall not be responsible for the choice of, condition, seaworthiness or manning of such lighter or craft nor for any loss or damage to the goods while on such lighter or craft or in the custody of the lightermen who shall be considered agents of the shipper and consignee.

17. If the carrier elects to lighter the goods in or with lighters or craft operated or controlled by it, the carrier shall have the benefit of all the liberties, rights, exemptions, immunities and limitations contained in this bill of lading, including those incorporated herein, with respect to such lighterage and may collect the cost thereof from shipper or consignee.

18. The carrier shall not be required to give any notification whatsoever of arrival, discharge or any disposition of or action taken with respect to the goods, any custom or practice of the port, the carrier or others to the contrary notwithstanding and even though the goods are consigned to order with provision for notice to a named person.

The carrier or master may appoint a stevedore or any other person to unload and take delivery of the goods and such delivery from ship's tackle shall be considered complete and all responsibility of the carrier shall then terminate.



It is agreed that when possession of the goods is received or taken by the customs or other authorities or by any operator of any lighter, craft, dock, pier, store, warehouse, refrigerator, elevator or other facilities whether selected by the carrier or master, shipper or consignee, whether public or private, such authority or person shall be considered as having received possession and delivery of the goods solely as agent of and on behalf of the shipper and consignee, at the risk of the goods and subject to any lien of the carrier thereon. Also if the consignee does not take possession or delivery of the goods as soon as the goods are at the disposal of the consignee for removal, the goods shall be at their own risk and expense, and delivery shall be considered complete and the carrier may, subject to carrier's liens, send the goods to store, warehouse, put them on lighters or other craft, put them in possession of authorities, dump them or permit them to lie where landed or otherwise dispose of them always at the risk and expense of the goods, and the shipper and consignee shall pay and indemnify the carrier for any loss, damage, fine, charge or expense whatsoever suffered or incurred in so dealing with or disposing of the goods, or by reason of the consignee's failure or delay in taking possession and delivery as provided herein.

18. The carrier shall not be liable for delay in or failure of delivery in accordance with marks unless the goods shall have been clearly, legibly and durably marked with identifying marks and the port of discharge. The carrier shall not be required to separate or deliver in accordance with brand, marks, numbers, sizes or types of packages but only in accordance with leading marks. Goods that cannot be identified as to leading marks, goods out of or separated from their containers or packages, cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for may, for the purpose of completing delivery, be allocated to the various consignees of cargo of substantially or general like character in proportion to any apparent shortage, loss of weight or damage, and such goods or such part thereof shall be accepted as good delivery. Loss of or damage to goods in bulk stowed without separation from other bulk cargo of substantially or general like character shipped to the same or other shippers may be divided and accepted in proportion among the several shipments.

Liquid cargo in bulk shall be pumped aboard by shipper as fast as ship can receive at the shipper's risk and expense so far as the ship's connection and shall be received at the port of discharge at ship's connection so soon and so fast as carrier is prepared to deliver.

19. The shipper and consignee shall be liable for, indemnify the carrier and ship and hold them harmless against, and the carrier shall have a lien on the goods for, all expense of forwarding and transshipping, including any increase in or additional freight, all expenses and charges for mending, cooage, baling, repairing or reconditioning the goods or their containers, and all expenses incurred in protecting, caring for or otherwise made for the benefit of the goods, whether the goods be damaged or not, and for any payment, expense, penalty, fine, dues, duty, tax or impost, loss, damage, detention, demurrage, or liability of whatsoever nature, sustained or incurred by or levied upon the carrier or the ship in connection with the goods or by reason of the goods being or having been on board, or because of shipper's failure to procure consular or other proper permits, certificates or any papers that may be required at any port or place or shipper's failure to supply information or otherwise to comply with all laws, regulations and requirements of law in connection with the goods or from any other act or omission of the shipper or consignee; also for all damages, charges, legal fees, expenses or disbursements which the carrier may suffer, incur or pay in connection with or arising out of claims, or attachments, seizures, execution, claims or legal proceedings of any description against the goods by third parties or any proceedings by way of interpleader or otherwise which the carrier may bring to determine the right of ownership or possession in or to the goods; also for any expense of or charges for regaining or attempting to regain possession of the goods.

The shipper and consignee authorize the carrier to pay and/or incur all such charges, expenses and other matters mentioned above and the carrier or master may solely at the expense of and as agent for the shipper engage other persons to mend, cooper, bale, repair or recondition packages or goods, regain or seek to regain possession of the goods and to do all things deemed advisable for the benefit of the goods.

20. Freight shall be payable, at carrier's option, on gross intake or discharged weight or measurement or on a value or other basis. Freight may be calculated on the basis of any particulars concerning the goods furnished by the shipper, but the carrier may at any time weigh, measure and value the goods, and open packages to examine contents. If there is an error in freight or other charges and if on correction the freight or charges should be higher the carrier may collect the additional amount. If shipper's particulars are found to be erroneous and additional freight is payable, the shipper, consignee and goods shall be liable for any expenses incurred in examining, weighing, measuring and valuing the goods.

Full freight to the port of discharge named herein and all advance charges against the goods shall be considered completely earned on receipt of the goods by the carrier, whether the freight or charges be prepaid or be stated or intended to be prepaid or to be collected at port of discharge or destination or subsequently, and the carrier shall be entitled absolutely to all freight and charges, whether actually paid or not, and to receive and retain them under all circumstances whatever, ship and/or cargo lost or not lost, or the voyage changed, broken up, frustrated or abandoned.

All charges or sums payable to the carrier are due when incurred and such charges, sums and all unpaid freight or other charges shall be paid in full without any offset, counterclaim or deduction in the currency named in this bill of lading, or at carrier's option, in other currency at the closing rate of exchange for bankers' sight bill current two days prior to the date of sailing of the vessel from the final United States loading port, unless such conversion date is a Saturday, Sunday, or legal holiday and for these days the previous business day's rate of exchange shall apply. Should freight and other charges be controlled by the tariff and a conference to which the United States Lines, Inc. is a member or by a tariff issued by the carrier, and should the tariffs provide a rule governing the date for conversion of the currency, said rule will supersede the provisions stated above.

The shipper and consignee shall be jointly and severally liable to the carrier for the payment of all freight, charges and other amounts due the carrier and for any failure of either or both to perform his or their obligations under the provisions of this bill of lading and they shall indemnify the carrier against and hold it harmless from all liability, loss, damage and expense which the carrier may sustain or incur arising or resulting from any such failure of performance by the shipper and consignee or either of them. Any person, firm or corporation engaged by any party to perform forwarding services with respect to the cargo shall be considered the exclusive agent of the shipper and consignee for all purposes and any payment of freight to such person, firm or corporation shall not be considered payment to the carrier in any event. Failure of such person, firm or corporation to pay any part of the freight to the carrier shall be considered a default by the shipper and consignee in the payment of freight.

The shipper and consignee shall be liable for return freight and charges on goods refused exportation or importation by any government or public authorities and the carrier accepts no responsibility therefor.

The carrier shall have a lien on the goods, which shall survive delivery, for all freight, charges and other amounts due under this bill of lading and may enforce this lien, by all available means, including public or private sale and without notice, upon the goods or any part thereof and any other property belonging to the shipper or consignee which may be in the carrier's possession. The net proceeds of any such sale, after deducting all costs and expenses in executing the lien, shall be applied towards the settlement of the freight, charges and any other amount due the carrier and the carrier shall not be under any further obligation in respect thereof, except to account for the balance, if any, of such proceeds; the shipper shall also remain responsible in the event the carrier is unable to obtain such payment on exercising a lien on the goods.

21. If the ship comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the master, mariner, pilot or of the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying vessel or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever, of the owners of said goods, paid or payable by the other or non-carrying vessel or her owners to the owners of said goods and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying ship or carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision, contact, stranding or other accident.

22. General average shall be adjusted, stated and settled according to York-Antwerp Rules 1950 at the Port of New York, or last port of discharge, at carrier's option, and as to matters not provided for in these Rules, according to the laws and usages at the Port of New York or any other place at the option of the carrier. Average agreement and bond, together with such additional security as may be required by the carrier, shall be furnished before delivery of the goods.

In the event of accident, danger, damage or disaster, before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belong to strangers.

23. Without waiver or limitation of any exemption from or limitation of liability afforded by law or by this bill of lading, neither the carrier nor any corporation owned by, subsidiary to, or associated or affiliated with the carrier shall be liable for any loss or damage whatsoever and whenever occurring by reason of any fire whatsoever, including that occurring before loading on or after discharge from the ship, unless such fire shall have been caused by the design or neglect or by the actual fault or privity of the carrier or of such corporation, respectively. In any situation where such exemption from liability may not be permitted by law neither the carrier nor such corporation shall be liable for any loss or damage by fire unless caused by negligence, including that imputed by law, for which the carrier or such corporation is liable, respectively.

24. It is agreed and understood that the meaning of the word "package" includes containers, vans, trailers, palletized units, animals and all pieces, articles or things of any description whatsoever except goods shipped in bulk.

In the event of any loss of or damage to goods exceeding in actual value \$500 per package lawful money of the United States, or, in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be \$500 per package or per customary freight unit as the case may be, and the carrier's liability, if any, shall be determined on the basis of a value of \$500 per package or per customary freight unit, unless the nature of the goods and a higher value shall be declared by the shipper in writing before shipment and inserted in this bill of lading.

In the event of a higher value being declared by the shipper in writing and inserted in this bill of lading and extra freight paid thereon if required, the carrier's liability, if any, for loss of or damage to or in connection with the goods shall be determined on the basis of such declared value and pro rata of such declared value in the case of partial loss or damage, provided such declared value does not exceed the actual value of the goods.

In the event of any loss of or damage to or in any connection with goods of a value of \$500 or less than \$500 per package, lawful money of the United States, or in the case of bulk goods shipped as such, per customary freight unit, the carrier's liability, if any, shall be limited to the invoice value of the goods unless the nature of the goods and a higher value shall have been declared by the shipper in writing before shipment and inserted in this bill of lading. It is agreed that in no event shall this clause operate to increase the extent of the carrier's liability beyond the applicable market value if that be less than invoice value.

In no event shall the carrier be liable for more than the loss or damage actually sustained. The carrier shall not be liable for any consequential or special damages and shall have the option of replacing any lost goods and of replacing or repairing any damaged goods.

25. Unless written notice of claim, except as otherwise provided in this clause, is given to the carrier within twenty days after the delivery of the goods, or where the goods are not delivered, within ten days after the vessel completes discharge at the port named herein, the carrier and the ship shall be discharged from all liability.

Any claim against the carrier for any adjustment, refund of, or with respect to freight, charges or expenses or for delay or any claim other than for loss or damage to goods, must be given to the carrier or its agent in writing within six months from the date when the goods are or should have been delivered.

In any event, the carrier and the ship shall be discharged from all liability for any loss or damage to the goods or with respect to freight, charges or expenses, or the refund thereof or any claim of whatever kind, nature or description, with respect to or in connection with the goods unless suit, arbitration or other appropriate proceeding is brought within one year after delivery of the goods or the date when the goods should have been delivered.

26. FRENCH JURISDICTIONAL CLAUSE: It is expressly agreed that all litigation in France arising out of or in connection with the contract, including any action on guarantee and even in case of several Defendants, shall be presented before the Tribunal of Commerce at Le Havre, which in France shall alone have jurisdiction in the matter, notwithstanding all laws to the contrary.

27. ANTWERP AND ROTTERDAM CLAUSE: Cargo for Antwerp or Rotterdam to be landed and received by the corporation appointed by the agents of the ship, consignees paying current charges whether delivery is taken over side or on the quay.

28. LONDON CLAUSE. (A) The Carrier shall, at its option, be entitled to land the goods within mentioned on the quay, or to discharge them into craft hired by it immediately on arrival at dock, quay, river wharf or other wharf or landing place selected by the Carrier, and at consignee's risk and expense; the Carrier being entitled to collect the same charges on goods entered for landing at the docks as on goods entered for delivery to lighters. Consignees desirous of conveying their goods elsewhere, shall, on making application to the ship's agent, or to the dock or wharf company, within 72 hours after ship shall have been reported, except as provided hereafter, be entitled to delivery in consignee's lighters or land conveyances at the following rates, to be paid with the freight to the ship's agent, against release, or to the dock or wharf company, if so directed by the ship's agent, viz.: Following wooden goods in packages: clothes-press, handles, blind rollers, hubs, spokes, wheels and cars, 1/8 per ton measurement; hops, 2/8 per ton weight; lumber and logs, 3/- per ton measurement or 2/6 per ton weight at ship's option; slates, 2/- per ton weight; Wheaton flour, 1/8 per ton weight. All other general cargo 1/8 per ton weight or measurement at ship's option; minimum charge, one ton.

(B) Grain for overseas delivery is to be applied for within twenty-four hours of ship's arrival (or thereafter immediately it becomes clear) at any dock, quay, river wharf or other wharf or landing place selected by the ship owners or agents. In the absence of sufficient consignee's craft, with responsible persons in charge, to receive as fast as ship can discharge overseas into lighters during usual working hours, the Master or agent may land or discharge into lighters at the risk and expense of the consignee. The Carrier or agent may land or discharge continuously day and/or night, any grain, landed, or discharged for ship's convenience during usual working hours (consignee's craft being duly in attendance) and any grain that may be landed or discharged before or after usual working hours (whether craft are then in attendance or not) is to be given up free to consignee's craft applying for same within seventy-two hours from its landing or discharge; otherwise it will be subject to the usual dock, quay, river wharf or other wharf or landing place charges. An extra freight of 7d. per ton shall be paid to the Carrier or agent on each consignment of grain whether any portion be landed or not. The grain is to be weighed at time of discharge, either on dock and/or dock, quay, river wharf or other wharf or landing place and/or craft at ship's option. Working out charges (including weighing as fixed by the Port of London Authority for grain in bulk and/or ship's bags) are to be paid by the consignee with the freight to the ship's agent or to the authorized representative of the dock, quay, river wharf or other wharf or landing place if so directed by the ship's agent in exchange for release. Neither party shall be liable for any interference with the performance of the contract herein contained which is caused by strikes, or lockout of seamen, lightermen, stevedores thereof, whether partial or otherwise, nor for any consequences thereof and in such case the Carrier or agent shall be entitled to land or put into craft at the risk and expense of consignee. In case the grain shipped under this bill of lading forms part of a larger bulk, each bill of lading is to bear its portion of shortage and damage, if any.



(C) ACETONE, ASPHALT, CARBON BLACK, CELLULOID, COTTON, COTTON WASTE, HAY HEMP, HYDROLENE, ISTLE, JUTE, LAMPBLACK, ILLUMINATING and OIL OF ALL KINDS whether ANIMAL, VEGETABLE, or MINERAL, and the liquid products of them or any of them, PITCH, RAGS, ROBIN, STRAW, TAR, TURPENTINE, VARNISH, WOOD SPIRITS, also any other goods of a more or less hazardous nature. Consignees to have craft in attendance immediately on ship's arrival at any discharging berth selected by the Carrier, to take delivery from ship or otherwise (at ship's option), of any of the above-mentioned commodities, the Carrier having the option of working continuously by day and/or night, and consignees to pay 1/3d. per ton weight or measurement at ship's option. If consignee's craft is not in attendance, the goods may be put into Captain's entry craft at risk and expense of consignees.

(D) Refrigerator Cargo: Goods may be discharged immediately on arrival at dock, quay, river wharf or other wharf or landing place selected by the Carrier, who shall have the option of working continuously day and/or night and are to be removed by consignees within 24 hours after ship shall have been reported at the Custom House. Consignee is to pay 1/8d. per ton weight or measurement at ship's option, otherwise the Carrier has the right of removing or of calling upon the dock, quay or wharf authorities to receive or remove all or any part thereof for storage or realization at consignee's risk and expense.

(E) In the case of heavy timber of rafting size delivered into the water in one of the docks in the river Thames, each consignee of such timber shall pay two-thirds of the ship's dock dues payable in respect of the space occupied by his portion of such cargo so delivered into the water.

Craft which are in attendance for delivery under above clauses and stipulations shall wait free of demurrage their regular turn to receive goods or grain as required by Carrier, either from ship or quay or Captain's entry craft.

All Port of London Authority charges are to be paid by consignee of the goods, and the Carrier shall have the same lien, rights, and remedies on goods or grain referred to in the above clauses or under any other clauses of the bill of lading, as they have by law in respect to freight.

This London Clause is, in respect of goods destined to that port, to form part of this bill of lading, and any words at variance with them are hereby cancelled.

29. Tientsin and Shanghai cargo may be lightered from below the bar and Hong Kong cargo from alongside the vessel at the vessel's option and expense but at the consignee's risk. In the event Taku Bar delivery is impossible on account of ice conditions, vessel has option to deliver freight at the nearest convenient open port as if such port were named as port of discharge, and all charges beyond such port for the account of, and collectible from consignee.

30. Authorities' permit to land shipments at Shanghai and/or other ports, for transshipment or discharge, of spelter salt, saltpeter, chlorate of potash, gunpowder, cartridges, ammunition, guns, cannon, or other firearms, or any other goods designated as contraband must be delivered to the vessel's agent at port of loading at least five (5) days before vessel sails.

31. The carrier may, any custom of the port to the contrary, appoint any person, firm or Harbor Authority to land, receive, and/or handle on wharf or into trucks and/or convey into shed and sort, stack on wharf or in shed, and deliver the goods to the consignees who shall pay to such person, firm, or Harbor Authority the current rate for all work performed in landing, and/or receiving, and/or handling the goods on wharf or into trucks and/or conveying into shed and/or sorting or stacking the goods on wharf or in shed and indemnify carrier from all risks and expenses incurred.

32. The terms of this bill of lading shall be separable and if any part or provision is invalid or unenforceable such circumstance shall not affect the validity or enforceability of any part or term hereof.

33. All agreements or freight engagements for the shipment of the goods are superseded by this bill of lading. If required by the carrier, a signed bill of lading, duly endorsed, must be surrendered to the carrier on delivery of the goods.







## DEFENDANT'S EXHIBIT D

January 17, 1969.

Messrs. United States Lines, Inc.  
Yokohama Branch,  
Yokohama.

Dear Sirs:

24 Tanks Synthetic Latex "FR-S 2004 and  
FR-S 223" B/L No. 18 Baltimore/Yokohama  
per s/s "Pioneer Moon" arrived on 14th  
January, 1969.

We regret to inform you that after taking delivery of the  
captioned goods from the said vessel we have found the following  
damages as remarked in the relative Cargo Boat Note which reads as  
under:-

11 Tanks Empty i.e. heavy or slightly dented and  
holed on sides &/or at bottom.

2 Tanks slightly dented and contents unknown

We, therefore, hold you responsible for the above damages  
and reserve our full right to make claim for same upon you.

You are kindly requested to treat this correspondence as our  
notice of claim for the damages in question.

Yours very truly,

SHINKO BOEKI CO., LTD.,

*A. Nozawa*  
A. Nozawa,  
Managing Director.



## DEFENDANT'S EXHIBIT D-1

DEFENDANT  
U. S. DIST. COURT  
S. D. OF N. Y.

APR 17 1974

February 1, 1969.

D1

+6

Mr. R. H. Williams  
Firestone International Co.  
Akron, Ohio.

Dear Mr. Williams:

Poor Arrival Condition of Lift-on/Lift-off  
Tanks per s/s Pioneer Moon.

As advised you per our cable of January 17, 1969, the captioned shipment arrived here in the most miserable condition we have ever seen, and 11 tanks out of 34 were found entirely empty. The detail of those 11 tanks was eight for FR-S 2004 and the balance for FR-S 223, for which we asked you to effect replacement shipment as per our abovementioned cable immediately after the dock strike ends.

From this unfortunate accident, customers are in deep trouble because of the short supply of the latices and your kindest assistance to secure tanks and to ship them as promptly as possible will highly oblige ourselves as well as customers.

For your information we enclose herewith several pictures of the damaged tanks. The cause of the damage was attributed by the Lloyd's agent here to the poor and insufficient securing of the tanks as well as to the heavy weather during the transit, and we are holding the U.S. Lines responsible for the damage and your kind help at your end to make the shipping company accept our claim and settle same at the earliest date will be highly appreciated by us.

Yours very truly,

Shinko Bocki Co., Ltd.,

*A. Nozawa*  
A. Nozawa,  
Managing Director.

AN/cn

DEFENDANT'S EXHIBIT D-2

## SHINKO BOEKI CO., LTD.

CODES USED

BENTLEY'S, ACME &amp; ABC

CABLE ADDRESS  
 "SHINKOSYNTHETICTOKYO"  
 "KEIKOTRADE TOKYO"

TEL: (465) 0941-3  
 1911-8

TELEX: TK4436 (SKB)

IMPORTERS, EXPORTERS  
 MANUFACTURERS' AGENTS  
 Shibuya Central Bldg.,  
 23 Udagawacho,  
 Shibuya-ku,  
 Tokyo.

Tokyo, March 18, 1969.

United States Lines, Inc.  
 71, Yamashita-cho  
 Naka-ku, Yokohama.

Attention: Mr. A. Chosokabe  
 Claim Agent.

Gentlemen:

Re: S.S. Pioneer Moon, Voy. 32-W  
 Baltimore/Yoko B/L No.18  
Claim Amount: US\$27,733.73

部長	副部長	課長	主任	係
課長	MAR 20. 1969		四 五	
7/1				

We acknowledge receipt of your letter of March 11, 1969, your ref. No. USL-757-Y concerning the captioned claim lodged upon you by us. We regret to note that you decided to turn down our claim because of the fact that your Marine Note of Protest was filed at the American Consulate at Yokohama on January 16, 1969.

We can not, however, entertain your above proposal, and we are confident that you will agree to accept our claim if you will carefully review again the relevant survey report prepared by the Lloyd's agents, in which they clearly attributed the cause of the damage in question to the insufficient securing. While the tanks stored in the Hatch #4 suffered from the heavy damages, other tanks arrived here in other hatches, i.e. #2 and #3, were all found in good condition even though they also encountered the same heavy weather per the same boat during the voyage. This fact forces us to believe that the damages under review were attributable to your insufficient securing in the Hatch #4 and it is reasonable for us to ask your compensation for our loss sustained from the damages.

Your kindest reconsideration for the earliest settlement will highly oblige.

Yours very truly,

SHINKO BOEKI CO., LTD.,

*A. Kojima*  
 A. Kojima,  
 Managing Director.

AN/en.

o.o. The Nishin Fire &amp; Marine Co.



## DEFENDANT'S EXHIBIT D-3

## SHINKO BOEKI CO., LTD.

CABLE ADDRESS  
"SHINKOSYNTHETICTOKYO"  
"KEIKOTRADE TOKYO"

TEL (463) 0941-3  
1911-8

TELEX: TK4438 (SKB)

DEFENDANT IMPORTERS, EXPORTERS  
MANUFACTURERS' AGENTS

Shibuya Central Bldg.,  
23 Udagawacho,  
Shibuya-ku,  
Tokyo.

CODES USED  
BENTLEY'S, ACME & ABC

U. S. DIST. COURT  
S. D. OF N. Y.

Tokyo, February 1, 1969.

APR 1969

D3

United States Lines, Inc.,  
Yokohama Branch,  
Yokohama.

Gentlemen:

部	課	主	任	印
44	2	19		
1-44				

Re: 11 Lift-on/Lift-off Tanks Synthetic Latexes  
FR-S 223 and FR-S 2004 per c/s "Pioneer Moon"  
ex. B/L No. 18 dd. Baltimore December 13, 1968.

Further to our letter of January 17, 1969 we are pleased to enclose herewith a copy of Survey Report prepared by Lloyd's agents as well as our debit note for the value of US\$27,733.73 and do trust the claim will be settled promptly through your kind attention.

As specified clearly in the survey report, the cause of the damage was attributable to the insufficient securing and heavy weather in transit, but we have taken the position that the only main cause was the poor securing of tanks in question which were all stored in the Hatch No. 4, while tanks in the other hatches did all arrived in perfectly sound condition even though they were also suffered from the heavy weather in transit per the same boat.

According to the survey report, the contents of 9 tanks totally leaked out and arrived in the perfectly empty condition, while two tanks were slightly broken and arrived with a small amount of the contents. As clearly cited in the report the remaining contents of the two tanks were found in the badly contaminated condition and rejected by us as well as by our customers because of being entirely unfit for the intended purpose. The remaining quantity was so small and unfit for the purpose, we treat these two tanks to be also empty, which kindly note.

We also wish to ask you to bear it in mind that you are responsible for the charges incurred for the landing of the 11 empty tanks, and we intend to settle same separately when the amount is known to us from the stevedore.

Thanking you in advance for your kindest attention and looking forward to hearing from you soon for the settlement of the above claim, we remain,

Yours very truly,

Shinko Boeki Co., Ltd.,

*[Signature]*  
As. Manager, Managing Director.

AN/on

Defendant's Exhibit D-3

## SHINKO BOEKI CO., LTD.

CABLE ADDRESS  
 "SHINKOSYNTHETICTOKYO"  
 "KEIKOTRADE TOKYO"  
 TEL (465) 0941-S  
 1911-S  
 TELEX: TK4426 (SKB)

IMPORTERS, EXPORTERS  
 MANUFACTURERS' AGENTS  
 Shibuya Central Bldg.,  
 23 Udagawacho,  
 Shibuya-ku,  
 Tokyo.

CODES USED  
 BENTLEY'S, ACME & ABC

Tokyo, February 1, 1969.

DEBIT NOTE.

Messrs. United States Lines, Inc.  
 Yokohama Branch,  
 Yokohama.

Re: Claim for shortage of FR-S 223 and FR-S 2004 per  
 s/s "Pioneer Moon" arrived on 14th January 1969,  
 as per B/L No. 18 dd. December 13, '68.

To: Shortage per 11 empty tanks out of 17 tanks.

Insured value as per attached insurance certificates.  
 US\$42,500.-

\$42,500 x  $\frac{11}{17}$  ..... \$27,500.00

To: Survey fee as per attached report

\$84,144 ex \$360.- 233.73

Total US\$27,733.73

Say: U.S. Dollars Twenty Seven  
 Thousand Seven Hundred  
 Thirty-Three and 73/100 only.

E. &amp; O. E.

Remarks: Landing and other charges incurred  
 for the empty tanks to be settled  
 later separately.

Yours very truly,

Shinko Boeki Co., Ltd.,

*A. Nozawa*  
 Managing Director.



## DEFENDANT'S EXHIBIT E

*Far East Conference*

Tariff No. 24

F. M. C. No. 2

From: UNITED STATES ATLANTIC and GULF PORTS.

To: JAPAN, OKINAWA, KOREA, TAIWAN, HONG KONG,  
PHILIPPINE ISLANDS, VIET NAM, CAMBODIA and LAOS.

ORIG./REV.	PAGE
3rd Revised	100
CANCELS	PAGE
2nd Revised	100
EFFECTIVE DATE	
June 24, 1968	
CORRECTION NO.	2180
CANCELS CORR. NO.	2053

## RULES AND REGULATIONS

21. CARGO IN  
CONTAINERS  
(continued)B) SHIPPER PACKED CONTAINERS - Provisions of this section apply only to  
containers packed by Shipper off the  
premises of the Carrier at Shipper's  
expense. (continued)

DEFENDANT

U. S. DIST. COURT  
S. D. OF N. Y.

APR 17 1968

Containers furnished by the carrier to shippers or to authorized shipper's representatives for use in facilitating the handling of cargo offered to such carrier for transportation must be packed and sealed by the shipper or his authorized representative off the premises of the carrier.

(7) Demurrage on Carrier Containers at Origin. Containers furnished by the carrier will be redelivered loaded by the shipper or his authorized representative to the carrier's berth at loading port, or to the inland carrier, as the case may be, not later than seven (7) days, exclusive of Saturdays, Sundays and holidays, commencing the day following on which the container is removed from the carrier's berth at loading port, or made available to the shipper at the inland point of origin at no expense to the ocean carrier, failing which a penalty charge for each container of \$1.00 per day, Saturdays, Sundays and holidays included, will be assessed and collected by the ocean carrier, to be paid by the shipper for each day or part thereof the shipper and/or his authorized representative retains the container.

(8) Rental Fee for use of Carrier(s) Container(s). All cargo loaded in Carrier(s) containers, when loaded by the shipper, shall be assessed a rental fee of \$3.00 per revenue ton (\$5.00 to Manila effective April 1, 1967) calculated on the basis of Section 5(b) of this rule - (Freight Assessed on Measurement and Freight Assessed on Weight).

(9) Over-flow Loads. Each container supplied by the carrier to shippers for loading shall be subject to the minimum weight/measurement provisions set forth in Section 5(b) of this rule - (Freight Assessed on Measurement and Freight Assessed on Weight), whether the container is fully utilized by the shipper, or not, and, in addition, shall be subject to Section B(8) of this rule - (Rental Fee for use of Carrier's Containers.)

If the carrier supplies the shipper more than one container and the shipper does not fully load the last remaining container, the freight applying on the overflow cargo shall be calculated on the actual quantity loaded in the said last remaining container, plus rental fee as provided in Section B(8) of this rule. The carrier reserves the right to utilize the unused space in the last remaining container subject to Section C) of this rule.

(10) Materials and Labor required for securing and proper stowage of Cargo in Containers. Materials and labor required for securing and proper stowage of cargo in shipper packed containers such as lashings, bulkheads, cross members, platforms, dunnage, etc., must be supplied by shippers at their expense and carriers shall not be responsible for such materials or the return thereof after use.

I: (11) Vessel's Liability. Each container, including its contents, is a single package and vessel's liability is limited to \$500.00 with respect to each container packed by shippers. For ad valorem cargo, when shipper declares a valuation for the contents of a container in excess of \$500.00 and additional freight paid, the declared valuation when proven will be considered vessel's liability.

New Matter

RECEIVED 2 COPIES THIS 30<sup>th</sup> Day of August 1974

**COPY RECEIVED**

AUG 30 1974

KIRLIN, CAMPBELL & KEATING



